nexus

UNIVERSITY OF TORONTO, FACULTY OF LAW

SPRING/SUMMER 2006

DEAN MORAN'S *LISTENING TOUR*

WITH STUDENTS AND ALUMNI AROUND THE WORLD

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WOMEN, LAW, AND SOCIAL CHANGE

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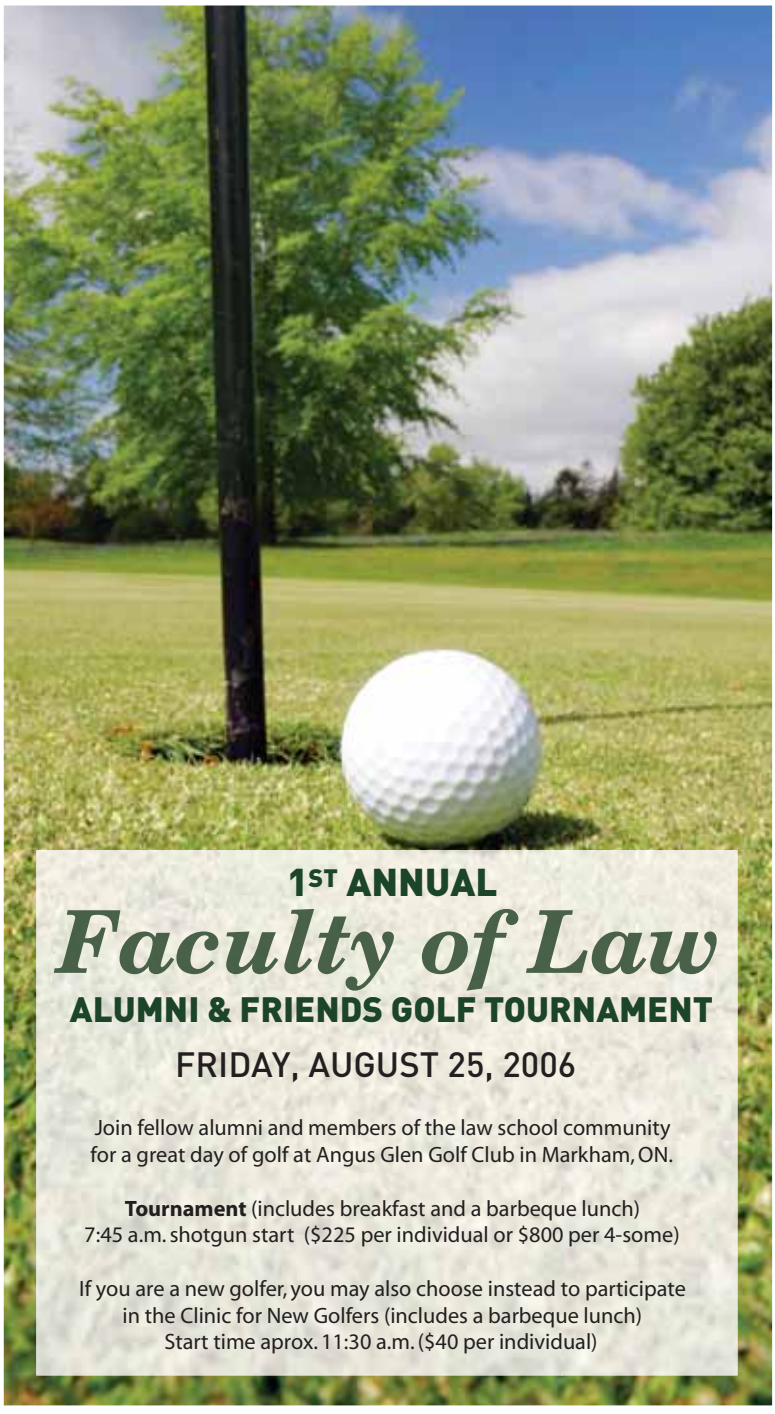
UNIVERSITY OF TORONTO FACULTY OF LAW



1ST ANNUAL
Faculty of Law
ALUMNI & FRIENDS GOLF TOURNAMENT

FRIDAY, AUGUST 25, 2006

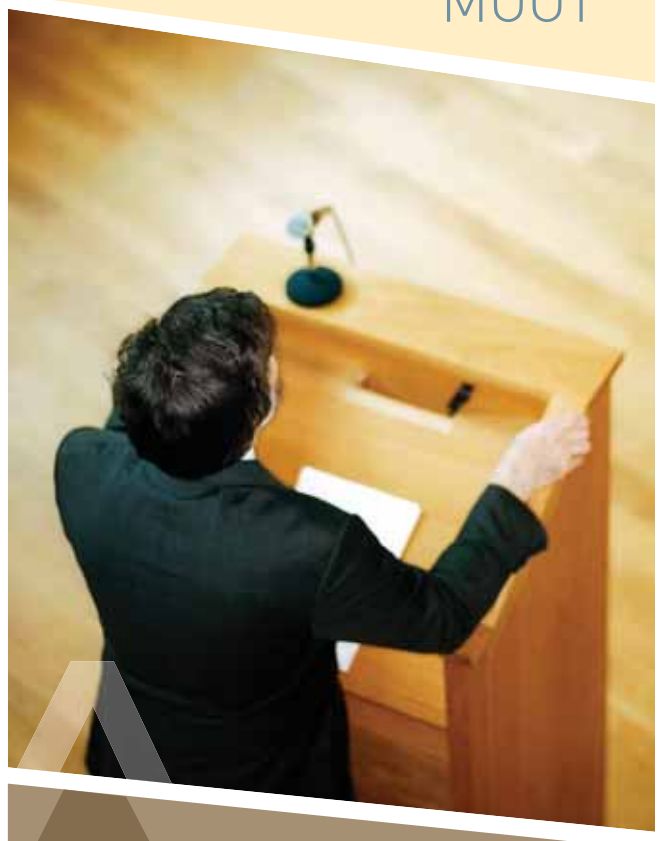
Join fellow alumni and members of the law school community for a great day of golf at Angus Glen Golf Club in Markham, ON.

Tournament (includes breakfast and a barbeque lunch)
7:45 a.m. shotgun start ($225 per individual or $800 per 4-some)

If you are a new golfer, you may also choose instead to participate in the Clinic for New Golfers (includes a barbeque lunch)
Start time aprox. 11:30 a.m. ($40 per individual)

Please note that the tournament is limited to a maximum of 120 participants. To guarantee your spot in the tournament, be sure to register soon! To register, visit our website at www.law.utoronto.ca or call Petra Jory at (416) 946-0888

U OF T LAW ALUMNI NEEDED TO JUDGE 2007 JESSOP MOOT



Alumni with experience and interest in international law and advocacy are needed as Judges for the 2007 Canadian National Division Qualifying Tournament of the **Philip C. Jessup International Law Moot Court Competition.**

The Canadian Tournament will be held at the Fairmont Royal York in Toronto from February 28 to March 3, 2007.

If you are interested in more information on judging and/or sponsorship opportunities, please contact the Canadian National Administrator, **Jamie Dee Larkam at jdlarkam@aol.com** or log onto www.jessupcanada.org.

nexus

Nexus is published by the Faculty of Law, University of Toronto for alumni, faculty, students, staff and friends of the law school.

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MESSAGE FROM THE DEAN

The Listening Tour

Dean Mayo Moran meets with alumni across Canada and around the world

IN JANUARY 2006, Dean Mayo Moran was installed as the 9th Dean of the U of T Faculty of Law, the first woman in its 150 year history. Since that time, she has embarked on an extensive "Listening Tour" of our alumni from Halifax to Vancouver. Her meetings have taken her into the offices of over 30 large and small law firms in Toronto, Vancouver, Calgary, Halifax, and New York, as well as government offices, public interest organizations, community clinics, courts, and other legal institutions, including the Department of Justice, the Human Rights Commission, the Ministry of the Attorney General, the Superior Court and the Court of Appeal for Ontario. Dean Moran also met with the Mayor of Toronto and leaders of the Law Society of Upper Canada, the Canadian and Ontario Bar Associations, Legal Aid Ontario, and the Law Foundation of Ontario. Closer to home, she also met with every faculty member, staff, and student groups at the law school.

Her ambitious goal is to get to know you, our alumni, better, and to learn your views on the law school, the legal profession, and what you see as the major challenges and opportunities that face us in the coming years. Here are some of the key questions that alumni asked, along with her answers.

WHAT MOTIVATED YOU TO ACCEPT THE ENORMOUS CHALLENGE OF BEING DEAN OF THE U OF T FACULTY OF LAW?

DEAN MORAN: This is an outstanding faculty and community. I arrived here by an unusual path. I began my career as a high school English teacher in Northern BC, and always loved teaching. When the *Charter of Rights and Freedoms* was introduced in 1982 I became very intrigued by the possibilities for Canada. So I decided to attend law school, and went to McGill University for my LL.B. By the time I graduated in 1990, I knew I had found my life's calling in teaching – and studying and writing about – law. I went on to do my LL.M. at the University of Michigan and then my S.J.D. at the University of Toronto. Despite having a number of options available to me, I chose the University of Toronto because I knew it was the very best institution in the world to do the kind of work that I wanted to do. That proved to be a great decision. The law school is an amazing intellectual environment with exceptional faculty members and students that are continuously committed to the exploration of new ideas in law and policy. As Dean, I will do everything I can to ensure that each student and faculty member thrives intellectually at the law school in this very special community. I want to create a more intimate learning environment within our walls, and to broaden the reach of the law school so that our faculty and students are fully engaged in the global conversation about legal ideas.

I want to create a more intimate learning environment within our walls, and to broaden the reach of the law school so that our faculty and students are fully engaged in the global conversation about legal ideas.

WHAT ARE YOUR KEY PRIORITIES AS DEAN AND HOW DO YOU SEE ALUMNI FITTING INTO THOSE PRIORITIES?

DEAN MORAN: Our alumni are an incredible source of the strength of the law school. As I go out and meet our graduates, I am dazzled by their talent, their energy and their achievements in all walks of life. For me, connecting with our alumni is one of the real thrills of my new job. I am looking forward to forging bonds with our alumni and creating meaningful links between the profession and the law school. Alumni are very connected to the law school and would like to be more involved. I believe that they are a tremendous resource for us. They are vital to our current mentoring program and there is room to expand on that. I am also interested in doing more with our legal research and writing programs and our advocacy training programs for students, and these are areas where alumni can make a vital contribution to the educational experience of our students. As well, I would like the law school to be a leader on issues of professionalism and ethics, and I want to partner with our alumni to develop programs in these areas. Finally, I think there are a number of areas where alumni and the law school could work together on the challenges that face the profession. For example, the retention of women and other under-represented groups in the profession is an issue that has come up frequently over the course of my listening tour. This coming year, I will be working with alumni leaders on an intensive course that will give third year students the opportunity to research and develop best practices.

WE HAVE OFTEN HEARD THAT U OF T IS BECOMING MORE "INTERNATIONAL." WHAT EXACTLY DO YOU MEAN BY THAT, AND HOW IS THE SCHOOL CHANGING?

DEAN MORAN: Globalization and internationalization of the law school can mean a number of different things. In today's world we must offer outstanding international programs to keep the best Canadian students in our country and to attract students from around the world. Internationalization is also about being responsive to the fact that we no longer live in a world that is defined neatly by national boundaries. Our world is one which transcends national and political boundaries and I believe it is critical that legal education provides students with the intellectual and practical tools they will need to work with law in our complex transnational world. Our Faculty is ideally situated to contribute to the larger conversation that is going on in the world of law at this time and to articulate Canada's voice to the world. Both the teaching of law and the practice of law have become so much more transnational and international, and legal educators are starting to recognize that institutions will need to work together to be responsive to this enormous change in our profession. Consequently, leading institutions are becoming interested in developing collaborative programs. I have begun discussions about collaborations with the leading international institutions, and I will be working with my faculty on this. We are well-positioned to be an institutional leader in this regard because we are already much more comparative and transnational than many other institutions, particularly those in the United States.

HOW IS THE STUDENTS' CLASSROOM EXPERIENCE DIFFERENT TODAY THAN IT WAS WHEN I WAS IN LAW SCHOOL TEN, TWENTY, THIRTY AND FORTY YEARS AGO?

DEAN MORAN: Those of you who graduated recently are probably aware of the fact that laptop computers have transformed the nature of the classroom. I had 75 students in my first year Torts class, and almost all of them wrote their exam on laptops. And virtually all students take notes in class on their laptops. It has really altered the way our classroom works. As a teacher, one of the most profound changes is that students don't make eye contact with me because they are all engaging with their laptops! Because most faculty teach in a lecture format, the classroom is starting to resemble a typing pool. This challenges us to think differently about how we teach. At some U.S. schools – Harvard is one example – some professors have completely banned the use of laptops. I am not a fan of that idea. However, I do feel that a vital part of the intellectual experience of law school is lost when students stop interacting with their professors and with each other. So we are looking at what other institutions are doing and thinking about – dare I say it – more Socratic forms of teaching. But given the horror stories that I have heard from our alumni, I should stress that I am talking about a gentler form of the *Socratic* method than was used in the early days of the law school!

HOW DO YOU INTEND TO ENSURE THAT THE LAW SCHOOL REMAINS ACCESSIBLE TO ALL TALENTED STUDENTS?

DEAN MORAN: I have been looking closely at this issue and I think the numbers suggest we are doing a very good job. We get more applicants than we did 10 years ago and the applicants are stronger. (We all wonder if we would get into law school these days.) In the past decade, our financial aid program has literally been transformed. We have done so well on accessibility because we have been proactive on financial aid. Today we disburse over $2.5 million annually in bursaries and interest-free loans to

approximately 60% of the class. The students at the lowest income levels are well protected with 40 students attending the law school tuition-free each year. The middle class is also well protected. We have students with family incomes as high as $200,000 who are receiving substantial financial aid from the law school. Of course, we will have to continue to monitor the situation and I am committed to doing that. Fortunately, we have a comprehensive picture of the financial situation of most of our students, and so we are able to monitor the income distribution of the class closely, and there has actually been an increase in the percentage of students from low-income families. At the same time, the quality of applicants (measured by GPA and LSAT scores) has also improved, the gender balance has stayed the same and diversity has increased. Because of these studies, we know that we have preserved accessibility for the best and brightest students regardless of their background. As Dean, I am deeply committed to continuing to work with students and others to ensure that our amazing track record in this regard continues.

WHAT ARE YOU DOING TO ENSURE THAT STUDENTS HAVE VIABLE CAREER CHOICES WHEN THEY GRADUATE AND ARE ABLE TO TAKE LOWER PAYING PUBLIC INTEREST JOBS IF THAT IS THEIR PREFERENCE?

DEAN MORAN: I had lunch recently with the heads of many of the legal aid clinics and employers engaged in public interest and pro bono work. They told me that they are very interested in our students and they know these students are keen to work for them based on the number of applicants they receive from U of T. The problem is that there are not enough jobs for the number of students that want them. So most of the jobs available to our graduates continue to be in large and mid-size law firms. But we have a number of programs and services available to encourage students to think broadly about their careers. We have amazing programs in public interest law, pro bono, and international human rights, as well as opportunities to work in various legal clinics and on international internships over the summer. We also have a dedicated staff person in the Career Development Office who counsels students on public interest career paths and provides specific programs and resources. And our back-end debt relief program provides financial support to students who choose less lucrative careers that are often in the public interest area. I would like to continue to think creatively of ways to provide meaningful career options to our students. Again, I think connecting students with alumni is one of these ways, whether through the mentor program or other new programs.

IS IT TRUE THAT THE LAW SCHOOL WILL BE STAYING ON ITS CURRENT SITE IN FLAVELLE HOUSE AND FALCONER HALL?

DEAN MORAN: My predecessor, Ron Daniels, worked hard to come up with a solution that would have allowed us to stay on our current site, but zoning restrictions at that time prevented that from happening. This was when the option of moving to a new location came up. But then late last winter, the ROM decided to withdraw its plans to develop the Planetarium site immediately to the north of the law school, and this made it possible to rethink the zoning for the site. This opened up the possibility of staying in our current location and building new space on our existing two historic buildings, Falconer and Flavelle. In order to assist me in evaluating the two options – building on the Queen's Park site or moving to a new location – I struck an Advisory Committee comprised of faculty, students, staff and alumni. In April, the Committee carefully considered all of the competing issues and unanimously decided that the law school should remain on the current site and renovate to upgrade and to create the extra space needed. The group felt it would be impossible to match the beauty of our heritage buildings and the significance of our location on Queen's Park Circle on a new site. Despite the disruption to students of a renovation project, the Committee felt quite strongly that a significant element of the law school's character and history would be lost if the Faculty were to move to a high-rise building on Bloor Street. As I reported in April, I am very pleased with the Committee's recommendation. Over the next few months, I will be consulting broadly and looking for creative ideas for the building project. We are also interested in a design competition. Of course, we will have to raise the necessary funds to support the renovation and building (approximately $40 to $60 million). Construction itself, which will likely not start for three years, will take 18 months to two years to complete. During the construction phase it will be important to minimize disruption to the student body. Ideally, I will look for a location where the entire law school community can move en masse for the period of construction. I hope that all of the building will be completed by the end of my term as Dean in 2011. ■

I believe it is critical that legal education provides students with the intellectual and practical tools they will need to work with law in our complex transnational world.

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ON THE COVER

Dean Mayo Moran in front of Flavelle House, along with student leaders from left to right: **Khalid Janmohamed** '08 (orientation co-chair), **Nafisah Chowdhury** '07 (coordinator of the Muslim Law Students' Association), **Christine Shalaby Kilby** '06 (class valedictorian), **Nicole Richmond** '06 (co-editor-in-chief of the Indigenous Law Journal), and **Alexander Smith** '08 (summer researcher for the Dean).

UP FRONT

DEPARTMENTS

FEATURES

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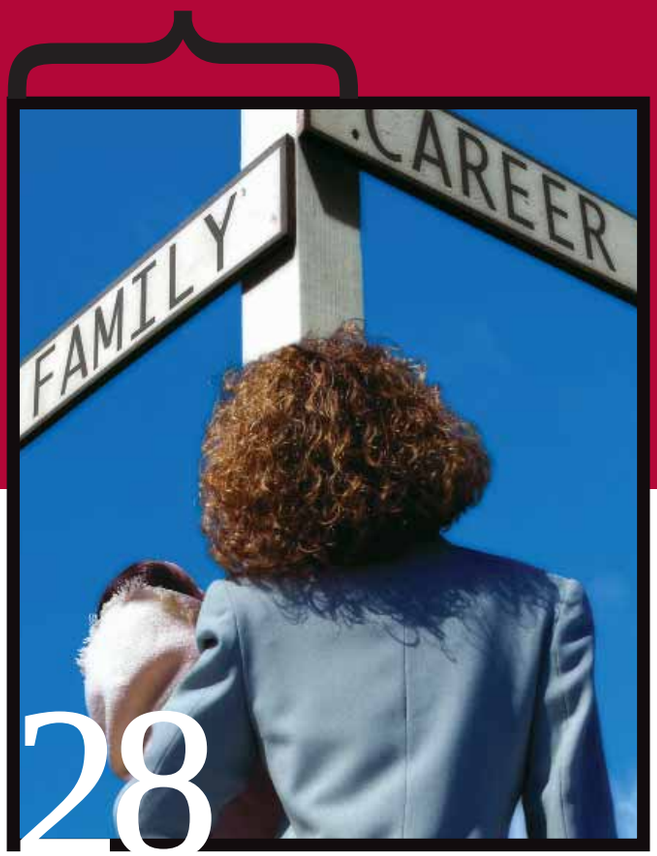

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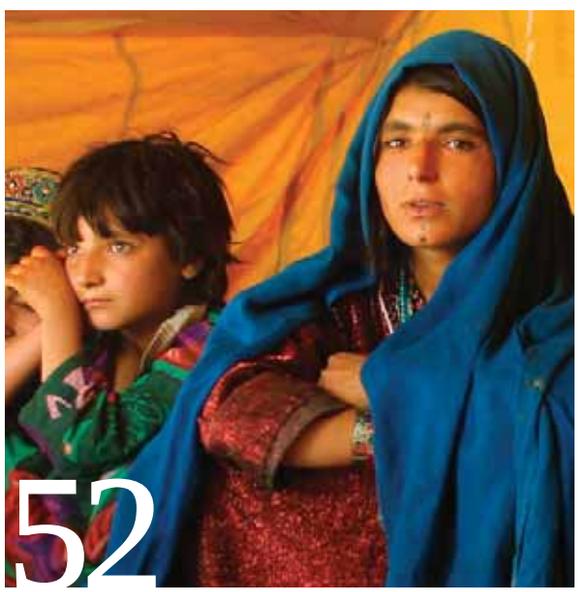

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FROM THE EDITOR

This issue of Nexus is dedicated to women.

Happily, as a woman in the 21st century, I am considered a "person." I am entitled to vote; sit on Canada's senate; hold political office; and practice law. Indeed I can do all of these things, and many more, secure in the knowledge that they are my rights and privileges, as much as they are the rights and privileges of the men who live and work alongside me and every other woman in this country. But take a few small steps backwards in time, and this has not always been the case. Indeed, the very first woman to graduate from U of T Faculty of Law in 1899 was not allowed to practice law *because* she was a woman. Clara Brett Martin was forced to petition the Law Society several times before she was permitted to become a student-at-law, and again, before she was allowed to be called to the Bar and practice law. For the women who came after her, the discrimination was not as overt. Yet the reality of finding a job and being hired was another story. Those that did find jobs were often the only women in all-male firms, and restricted in their type of practice. Thankfully, there were many courageous and tenacious women who persevered, and in doing so paved the way for the rest of us. For that we must never forget these "trailblazers."

Nineteen very special women graduates – who we consider to be trailblazers in a diversity of ways, and who are representative of all women graduates of the law school – are featured in a permanent photo exhibit installed in the lobby of Flavelle House. On March 8, 2006, the "Trailblazers Exhibit" was unveiled in celebration of International Women's Day. In the weeks and months that followed, it generated an outpouring of positive stories and sentiments. If you have not yet seen the display, please take some time to flip through pages 60 to 83 where their unique photos and stories are reproduced. Better yet, drop by the law school to see it in person.

This issue of *Nexus* encourages readers to reflect on the amazing accomplishments of our women graduates. But it also urges us to recognize that there is still much more to do. The *Focus* section beginning on page 24 and running to page 59, "Women, Law and Social Change," is jam packed with ten insightful articles about both personal and public issues confronting women today in Canada and around the world. Professors Nedelsky, Rogerson, Shaffer, Réaume, and others, tackle issues such as motherhood, work-life balance, the evolving law of spousal support, gender equality under the *Charter*, and international human rights for women and children.

Finally, coinciding with this special issue of *Nexus*, we applaud the strength and vision of our new dean, Mayo Moran, the first female dean in the 150-year history of our law school. Mayo is a shining example of how far we have come, how much can be accomplished, and how we as a society are richer for the contributions of both men and women equally.

I hope you enjoy this issue and please write to me with your thoughts and stories. ■

JANE KIDNER '92

Editor-In-Chief
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CONTRIBUTORS

REBECCA COOK is Professor and Faculty Chair in International Human Rights, Co-Director of the International Reproductive and Sexual Health Law Programme, and is cross-appointed to the Faculty of Medicine and the Joint Centre for Bioethics. Her research focuses on international human rights, women's health, and feminist ethics. Her most recent book, *Reproductive Health and Human Rights: Integrating Medicine, Ethics and Law* is now available in English, French, Spanish, Portuguese and Chinese language editions.

BRENDA COSSMAN joined the Faculty of Law in 1999, and became a full Professor in 2000. Her teaching and scholarly interests include family law, freedom of expression, feminist legal theory, law and sexuality, and law and film. Her most recent upcoming book, *Regulating Sexual Citizenship* will be published by Stanford University Press. She is currently working on a project on motherhood, the opt-out revolution and the future of feminism.

KAREN KNOP is an Associate Professor whose research encompasses public international law with a focus on issues of interpretation, identity and participation. Her book, *Diversity and Self-Determination in International Law* was awarded a Certificate of Merit by the American Society of International Law. She is the editor of *Gender and Human Rights* and co-editor of *Re-Thinking Federalism: Citizens, Markets and Governments in a Changing World.*

AUDREY MACKLIN is an Associate Professor whose teaching areas include criminal law, administrative law, and immigration and refugee law. Her research and writing interests include transnational migration, citizenship, forced migration, feminist and cultural analysis, and human rights. Recent scholarship includes the articles "Exile on Main Street: Popular Discourse and Legal Manoeuvres Around Citizenship", "Bootstrapping Citizenship" and the book *Law and Citizenship.*

JENNIFER NEDELSKY joined the Faculty of Law in 1986. Her teaching and scholarship focuses on feminist theory, theories of judgment, U.S. constitutional history and interpretation, and comparative constitutionalism. She is currently working on two new books, *Law, Autonomy and the Relational Self: A Feminist Revisioning of the Foundations of Law and Human Rights;* and *Judgment: A Relational Approach.*

DENISE RÉAUME was appointed to the Faculty of Law in 1982 and promoted to full Professor in 1996. She served as Associate Dean, Graduate Studies from 1990 to 1995 and teaches in the areas of tort law and discrimination law. Professor Réaume's current research projects include work on official language rights in Canada, discrimination law, and tort law.

KERRY RITTICH joined the Faculty of Law in 1998 as an Assistant Professor of law and women's studies and gender studies. She is the author of *Recharacterizing Restructuring: Law, Distribution and Gender in Market Reform* and recently completed a report for the Law Commission of Canada entitled *Vulnerable Workers: Legal and Policy Issues in the New Economy.* Her scholarly and teaching interests include international law and institutions, human rights, labour law, critical legal theories and feminism.

CAROL ROGERSON is a Professor at the Faculty of Law, where she began teaching in 1983 and served as Associate Dean from 1991 to 1993. Her teaching and research interests encompass constitutional law and family law. She has worked with both federal and provincial governments on issues of family law reform and is involved in a Justice Canada project to develop a national set of spousal support advisory guidelines.

MARTHA SHAFFER joined the Faculty of Law in 1990, and is now an Associate Professor. She teaches and writes in the areas of family law and criminal law. She has recently written on the impact of wife abuse in custody and access decisions, grandparent access, and on joint custody and shared parenting. Her current research involves an examination of the impact of the 1992 amendments to the sexual assault provisions of the Criminal Code on the processing of sexual offences.

BEATRICE TICE is Chief Law Librarian of the Bora Laskin Library at the Faculty of Law. Previously, she practiced for over eight years as a commercial litigator with several major law firms in southern California. A specialist in foreign, comparative and international legal information, Beatrice has published several works in this area, including a recent article in *Law Library Journal* on collecting and preserving worldwide official gazettes.

LORRAINE WEINRIB's appointment to the Faculty of Law and the Department of Political Science in 1988 followed 15 years specializing in public law at the Ministry of the Attorney General of Ontario. She teaches advanced courses on the *Charter,* constitutional litigation, and comparative constitutional law. Her current work delineates the juridical paradigm underlying Canada's *Charter* and, more generally, the postwar, rights-based constitutional state.

BRENDA COSSMAN

REBECCA COOK

KERRY RITTICH

CAROL ROGERSON

AUDREY MACKLIN

KAREN KNOP

DENISE RÉAUME

LORRAINE WEINRIB



(L-R): Janet Minor '73
Liz McIntyre '76
Gloria Epstein '77



(L-R): Linda Rothstein '80
Beth Atcheson '78
Diane Goodman '83

LETTERS

NEXUS WELCOMES LETTERS ON ITS CONTENTS.

Please write to ***Nexus,*** 78 Queen's Park, Toronto, ON M5S 2C5. Fax comments to 416-978-7899 or e-mail **Jane Kidner** at j.kidner@utoronto.ca. Letters may be edited for length and clarity.

MINORITY RIGHTS IN A MULTICULTURAL SOCIETY

Professor Emon's discussion of Sharia law, and his clear interest in how the tradition might retain vitality in contemporary Canadian Muslim communities resonates with recent efforts by a local group (Waterloo Region) of Mennonite lawyers and academics to explore whether historical Mennonite principles (e.g. religiously based pacifism) have any survival value as Mennonites are assimilated into the modern Canadian legal and political order. Professor Macklin's article is also of particular interest, as I happen to be advising a congregation which is considering the sanctuary issue. In that regard, I think it would be beneficial to make copies of Professor Macklin's article available to that congregation. Thank you for an excellent issue. I look forward to the next issue.

RUSSEL SNYDER-PENNER '97
Sutherland Mark Flemming Snyder-Penner Professional Corporation

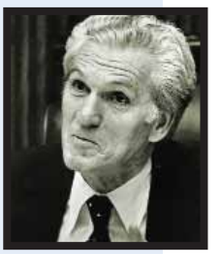
WHAT EVER HAPPENED TO

I was pleased to read the delightful alumni profile of Greg Kiez ('87). He was a classmate in law school and I found it intriguing to learn about what he has been doing in Istanbul, Turkey since graduation.Thanks for satisfying my 'wonder-where-they-are-now?" curiosity.

AUDREY MACKLIN '87
Toronto, Ontario

REMEMBERING BORA LASKIN

Although I am not one of your alumni, my connection with the Faculty of Law goes back a long way. My sister, Joyce McClennan, who died in 1972, was associated with the Faculty as secretary to the Dean and Administrative Assistant for over 30 years. In 1940, when I was working as Secretary to Dr. W. J. Dunlop of the Department of University Extension at Simcoe Hall, Joyce was hired on a one-year contract paid for by the Canadian Legion to help provide B.A. correspondence courses for Canadians in the Armed Forces. At the end of the year Dr. Dunlop spoke to Dr. Cody, the President, about an increase in the budget to allow him to hire Joyce for another year. Dr. Cody could promise money for only half a position but a few later days later came around joyously to say he had found a solution. The Faculty of Law had just taken on a young man, Bora Laskin, who needed secretarial help and if Dr. Dunlop could give Joyce a desk and if she would be willing to put on her coat and run through the parking lot to 45 St. George Street, then she could have a full-time job. From then on Joyce was known as "Bora's half-girl." When Mr. Laskin left to go down to Osgoode Hall, Dean Wright was looking for a secretary which Osgoode Hall had at long last allowed. Before that, Dean Wright paid for help out of his own pocket. Mr. Laskin suggested Joyce apply and she was with them when they went up to the University of Toronto in 1949.



BARBARA (MCCLENNAN) STOREY
Peterborough, Ontario

A word of appreciation for this excellent issue (Fall/Winter 2005). I read it from cover to cover. Two items particularly interested me. *'Remembering Bora Laskin'* brought back so many memories of my years at Baldwin House. Bora and Caesar Wright loomed so very large on our horizons. Whilst we lacked the facilities, variety of courses and extra activities now available to present students, we did have something very precious, the feeling of solidarity enjoyed by a very small group who had deliberately chosen the slower road to knowledge. We all knew that an extra year was to be our lot, but I feel we gained so much more. (Unfortunately, in my case, personal reasons prevented me from completing the final steps and I never got a call to the Bar.) The other item of note to me was the column on the Gustav Hahn ceiling in Flavelle House, my best friend at Trinity, Natalie Hook (now McMinn) was his granddaughter.

I hope we will be able to visit Flavelle House and see it the next time I am in Toronto, maybe this fall. The cover photo was delightful. I am passing it on here to an acquaintance of mine who is fascinated by Canadian aboriginal culture. He will be very happy to add it to his collection. It really is a pleasure for me to see the high status of the Faculty now, it would have been impossible for us to have imagined this when we were at Baldwin House.

ANN COOLING (JONES) STUART '56 *Bristol, UK*

THE FIRST NATIONS OF CANADA

I read with great pleasure Professor Johnston's contribution to the last issue of *Nexus.* As an Anishinabe woman, participation within the institutions of Canadian society – be it voting in a federal election or pursuing western education – leads to the inevitable question, at what cost?

My grandmother's first experience with western education occurred when she was taken forcibly from her family. She endured loss, separation, forced labour and concerted attempts to strip her of her language and her culture. It is a testament to her strength, and the strength of the teachings carried by the Anishinabe, that she is the person she is today. She returned to our community, spent more than twenty years teaching the Ojibwe language and eventually earned a bachelors degree in education. She is a kind and generous woman and I think about her when I think of what it means to be Anishinabe.

I am part of the third generation of women in my family to pursue knowledge within Canadian universities and within our own community. I feel fortunate in my own educational experience. I have had the opportunity to know who I am as Anishinabe, an opportunity safeguarded by the dedication of my family, my community and the Anishinabe people. As a law student, I have worked with two outstanding Anishinabe legal scholars, Darlene Johnston and John Borrows, both graduates of U of T. Through the Kawaskimhon Moot, the June Callwood Fellowship and the Indigenous Law Journal – all initiated at U of T – I was able to contribute to the faculty in ways that were meaningful to me. I look forward to returning to U of T and joining others in the continuing effort to transform the educational experiences of future generations.

DAWNIS KENNEDY '03

BY MARIA SAROS LEUNG
EDGE MAGAZINE

JUTTA BRUNNÉE

In a quiet office in the Faculty of Law's Flavelle Building, Jutta Brunnée is answering some tough questions: When, if ever, is it appropriate to militarily intervene in other nations? How do sovereign states address global environmental problems?

A professor of international law and international environmental law, Brunnée has spent her career examining how these laws shape the behaviour of nations. Their challenge, she says, is tackling "collective problems in a world of sovereign states."

Brunnée became interested in the environmental side of international law during the field's early stages. "Twenty years ago, there were some basic principles, and a handful of treaties acknowledging that yes, we have international environmental problems that need addressing."

Today, international environmental law is a highly specialized area with hundreds of agreements addressing everything from ozone depletion and water pollution to endangered species. In her role as the Metcalf Chair in Environmental Law, Brunnée is filling the need for an authoritative voice on the field as co-editor of the upcoming *Oxford Handbook of International Environmental Law.* The book outlines theoretical concepts and captures how not only states, but international organizations, NGOs and industry, are involved in shaping and implementing environmental law.

Climate change, says Brunnée, is one area where these various players are involved in negotiations. She combined theory with practice in 1998, when she spent a year as a legal advisor on the Canadian Delegation to the United Nations Framework Convention on Climate Change. "It's not as simple as saying that Canada commits to reducing emissions. For an agreement to be successful, countries need to find ways to change the behaviour not just of industry, but across all segments of society."

Challenging current paradigms is inherent in Brunnée's approach to her scholarship. As an international law scholar, she also examines the use of force between states and the role of the UN since 9/11. Under international law, military intervention is permissible only on the grounds of self-defense or Security Council authorization. Brunnée has been grappling with the question, "Is military intervention on humanitarian grounds ever appropriate?"

A recent Canadian initiative called *The Responsibility to Protect* promotes the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe. When they are unwilling or unable to do so, this responsibility must be shared by a broader community of nations. "The report embraces an important conceptual shift because it's not about the right to intervene, but about the responsibility to protect human lives." Brunnée, whose comments on the report are featured on the Foreign Affairs website*, says the challenge is to strike a balance between constraining military intervention and the need to actually enable it where urgently required.

While her research finds resonance in seemingly disparate topics, Brunnée says she's driven by what international law and international environmental law have in common. "Neither is going to prevent states that want to breach laws from doing so. But what they can do is force key actors to continually justify their actions against shared standards. The hard work of international law is to build and rebuild shared norms." ■

*For Jutta Brunnée's comments on *The Responsibility to Protect,* please visit: www.dfait-maeci.gc.ca/cip-pic/library/jutta-r2p-en.asp

WHAT EVER HAPPENED TO

BY JANE KIDNER '92 and ANA MANAO

JUNE BUSHELL '51

Following law school, finding an articling position was an experience she recalls as 'simply dreadful.' "No one wanted to hire a woman," said June. "One professor I sought help from told me I would be better off to 'go to parties and get married.'"

By the time she was 10 years old, June Bushell's father had already convinced her she should follow a professional career. "He'd seen too many widows with children, destitute," says June. "He wanted me to be able to support myself." What June's father didn't tell her though, was that it wasn't going to be easy for a woman in the 1940s to be accepted as a lawyer.

Entering law school at the end of the war, June was one of very few women among a class of nearly one-third returning servicemen. She recalls classmates and faculty as mostly supportive, but not without their biases about women studying law. "Dean Kennedy was a great character and a wonderful lecturer. But he used to say to the women: "you're lucky to be here."

Exam results provided another source of anxiety for both the men and the women recalls June. Marks were first published in the newspaper, where lists would include those who had passed and failed in order of ranking. "I would drive to the corner of Yonge and St. Clair and wait for the *Globe and Mail* to come out," says June. "Nothing was secret, it was all very public."

Following law school, June set out to find an articling position. It was an experience she recalls as "simply dreadful." "No one wanted to hire a woman," said June. "One professor I sought help from told me I would be better off to 'go to parties and get married.'" Despite the challenges, June persevered and found her first job with the provincial government's Child Welfare Department. After two years, she went on to the commercial department of the Crown Trust Company. When she realized she wasn't advancing, she joined a small litigation firm Chappell, Walsh & Davidson, at that time situated on Bay Street.

"The firm was reluctant to hire me at first," says June. "They had a partnership meeting and consultations with clients in order to decide whether it was acceptable to hire a woman!" A few years later, though, she made partner and the firm name became Chappell, Bushell and Stewart. June spent the rest of her career developing a strong client base and practice in corporate, commercial and real estate law. After several moves, the firm settled at the Eaton Centre, where it still operates today. "I felt a great sense of camaraderie with the lawyers and the clients," recalls June. "I am not sure that is something that exists as much for young lawyers today."

After practicing for 36 years, June retired in 1989, and continues to live in Toronto. Although she misses many of her clients and partners, she enjoys her free time, and is staying connected to U of T by taking several courses each year in history and languages – her most recent course, one in Modern European History.

DID YOU KNOW?

SEPTEMBER 2006 marks the 30th anniversary of the "Women and the Law" student group at the U of T, Faculty of Law. In the early 1970s, women at the law school comprised less then 10% of the total student enrollment. A few of these early "trailblazers" started to publicly call for greater consideration of women's issues, including the creation of a resource library and a Women's Caucus. According to historical records, the Women's Caucus met on March 20, 1974 to plan for a Women and Law Conference in Windsor – which would become the founding event for the National Association of Women and the Law (NAWL) in Canada. A little more than a year later, when the academic year began in September of 1976, the Women's Caucus had formally renamed itself Women and the Law and it held its first meeting in seminar room 3 in Falconer Hall. In charge of the meeting was Vicki Trerise '76, who is today a mediator in Vancouver. Other women students who were active with the group according to Vicki were Liz McIntyre, Liz Stewart, Nancy Goodman, and Barb Jackman. One of their first initiatives was a conference for women in Ontario law schools, which was held October 29-31, 1976, and included workshops on "Women in the Labour Force, in Politics, and in the Legal Profession, and the Value of Marriage."

when the academic year began in September of 1976, the Women's Caucus had formally renamed itself Women and the Law and it held its first meeting in seminar room 3 in Falconer Hall.

Despite negative reactions from some male students about the presence of female classmates, Vicki recalls others who were very supportive. In her second year of law school, she was invited to join the men's intramural touch football team. A year later, she and classmate, Linda Robertson, were welcomed onto the men's intramural soccer team. After losing to another division in the quarter finals, the law team suffered yet another blow when they were disqualified for having two female players. "The winning team lodged an official complaint and the University agreed that we should not have been allowed to play," said Vicki. "So we complained to the Ontario Human Rights Commission – and won!" As a result, the University agreed to review its entire Intramural sports policies, making headline news in the Globe and Mail that year.

By the end of the 1970s, the enrollment of women students had risen to 25% and the law school had five female professors, including Dianne Priestly, Hilda McKinlay, Marie Huxter, Mary Eberts and Judith Swan. Today, women comprise half of the entering class each year, and the faculty is more than 40% women. The student group, Women and the Law, is still going strong, revitalized in the past two years by students Alexis Alyea, Kathryn Bird, Andi Chow, Polly Dondy-Kaplan, Carina Kwan, Sunita Chowdhury, Darshana Patel, Candice Suter, and Zimra Yetnikoff. If you have ideas for Women and the Law or would like to be on their alumni mailing list, send a note to women.law@utoronto.ca.

By Jane Kidner, with file notes from Charles Levi, historical researcher

FROM OUR ARCHIVES

75 YEARS AGO

IN 1931

The British Parliament enacted the *Statute of Westminster*, which gave formal recognition to the autonomy of the dominions of the British Empire and was the founding charter of the British Commonwealth of Nations. Spain became a republic with the overthrow of King Alfonso XIII. Maple Leaf Gardens opened in Toronto, and authors Alice Munro and Mordecai Richler were born. Law had just become a separate department in the Faculty of Arts at U of T and a new course ("The Honour BA in Law") was created under the guidance of W.P.M. Kennedy. Cecil A. Wright, who at that time was a professor at Osgoode Hall's law program and who would later become Dean of the U of T Law School when Kennedy retired in 1949, was the first speaker invited to Dean Kennedy's newly formed Law Club. A decade later in 1941, Kennedy revived the dormant Faculty of Law and became its first official Dean.

50 YEARS AGO

IN 1956

Louis St. Laurent was Canada's Prime Minister and Vincent Massey was Governor General. Lester B. Pearson proposed a successful resolution to the Suez Crisis that would subsequently win him a Nobel Peace Prize, and John Diefenbaker was elected leader of the Progressive Conservative Party. The gyrating Elvis Presley emerged as one of the world's first rock stars with hit single *Heartbreak Hotel*, appearances on the Milton Berle, Steve Allen and Ed Sullivan shows, and his first movie, *Love Me Tender*. Back at the Law School, after four years in Baldwin House (1952 to 1956) and faced with lack of classroom and reading room space, the Faculty of Law was moved temporarily to Glendon Hall on Bayview Avenue. Graduates of the law school that year included Professor Emeritus, Stanley Schiff, who ranked first in his graduating class and the Honourable Henry Jackman, who went on to serve as Ontario's 25th Lieutenant Governor and Chancellor of the University of Toronto.

25 YEARS AGO

IN 1981

Pope John Paul II was shot and wounded by a Turkish terrorist. Former Hollywood star, Ronald Reagan became the 40th President of the United States, and cancer activist, Terry Fox, died. The Canadian government and all provinces, except Quebec, agreed on how to patriate the Canadian Constitution, and Quebec's French language sign law came into effect. At the Law School, then-Dean Frank Iacobucci was seen on stage at the newly formed Law Follies wearing a large sombrero and singing a duet with Professor Bruce Dunlop. Other now-legendary skits that year included impersonations of Professors Jacob Ziegel and Dick Risk. The law faculty numbered just 31 professors, half what it is today, and only two women were part of the ranks: Kathryn Swinton (now on the Superior Court of Justice) and Marie T. Huxter '68. Two years later, Carol Rogerson, who was in her second year of law school, joined the faculty to make three women professors. Out of 140 graduates that year, just 52 or 35% were women.

Students Participate in Citizens' Assembly on the Future of Democracy in Ontario

This September, U of T law students will have an opportunity to participate in what has been described as an historic moment for the future of democracy in Ontario. As part of the faculty's "Capstone Course Program" started in 2005 under the direction of Associate Dean and Faculty Coordinator, Lorne Sossin, third year students will undertake research on issues directly relevant to the work of the Citizens' Assembly on Electoral Reform. The unique classroom experience is the first of its kind in Ontario and is part of a collaborative initiative between U of T and Osgoode Hall law schools, and the Citizens' Assembly of Ontario. This past March, the Ontario Government announced that it was establishing a Citizens' Assembly to consider whether to recommend changes in Ontario's electoral system. The Assembly will have 103 members, one member from each of Ontario's electoral ridings, and will be chaired by George Thomson, a former judge and former Deputy Attorney General in both the federal and provincial governments. If the Assembly recommends a change in the electoral system, the government will hold a referendum on that alternative on or before the next provincial election in October 2007. "I am pleased that students from U of T and Osgoode will be undertaking research that will be helpful to the Assembly in its work," Thomson said. Topics to be explored in the directed reading course will include the advantages and disadvantages of various electoral systems, the relationship between electoral systems and election outcomes, whether different electoral systems tend to favour different policy outcomes, and the value of a citizens' assembly process as a vehicle for achieving electoral reform. The ground-breaking course comes on the heels of last year's highly successful Capstone Courses which included hands-on learning opportunities with Stephen Lewis, David Miller, Preston Manning, and Frank McKenna. Already in the works for next year is a course on the future of judicial independence with Justices Brian Lennox of the Ontario Court of Justice, Heather Smith of the Superior Court of Justice and Chief Justice Roy McMurtry of the Court of Appeal for Ontario.

George Thomson, Chair of the Citizen's Assembly on Electoral Reform.

PROFS. COLLEEN FLOOD AND TRUDO LEMMENS LAUNCHED TWO INFLUENTIAL NEW BOOKS ON HEALTH LAW AND POLICY IN CANADA: *JUST MEDICARE: WHAT'S IN, WHAT'S OUT, HOW WE DECIDE* AND *LAW AND ETHICS IN BIOMEDICAL RESEARCH: REGULATION, CONFLICT OF INTEREST AND LIABILITY*, RESPECTIVELY.

BONNIE GOLDBERG '94
HONOURED FOR NETWORK BUILDING

After more than nine years of service to the Law School as Assistant Dean, Career Services, Bonnie Goldberg '94 has received an Award of Distinction from the Association of Legal Professionals (NALP), for her outstanding leadership in the area of career services. She was honoured by the association of career services professionals and legal recruiters at an annual educational conference in San Diego this April where she was the only individual to receive this award before a crowd of more than 1300 conference attendees (two other awards were granted to institutions.) In 1997, with a shoe-string budget and a healthy dose of determination, Bonnie started the Career Development Office (CDO) at the U of T Faculty of Law, the first of its kind in Canada. Shortly after, she was appointed Assistant Dean for Career Services, a position she held until her recent appointment this past winter as Assistant Dean of Students. From the very beginning Bonnie was dedicated to building the program and assisting others across the country with similar goals. She quickly expanded the office offering innovative programs, services and resources. Under her leadership, the CDO was the first to create two additional professional positions – one with a mandate to serve students with public interest/service career aspirations; the second to serve the graduate student population. As other law schools began to start their own career services offices, Bonnie very quickly identified the need for a collective voice among legal career professionals in Canada with the goal of addressing issues related to entry-level lawyer recruiting and hiring, lateral hiring, professional development for students and lawyers, and other related issues. In 1998, she played a critical role in the founding of the Canadian Legal Career Development Network (CLCDN), an informal organization of career development professionals across the country, with a strong affiliation to NALP. At the same time as she was working to bring the Canadian law schools together, she dedicated considerable time and energy to fostering relationships for the Canadian career service professionals with their American counterparts. Bonnie has played a pivotal role in identifying priorities and concerns related to Canadian recruitment and career development and in developing a North American network for addressing issues collectively, both on the employer and school side. Through her advocacy, volunteerism and determination, she introduced Canadian law schools to a wider audience and highlighted Canadian best practices to her American counterparts. In short, Bonnie has been an exceptional leader, mentor and trusted colleague among the professionals in her field and is a well-deserving recipient of this award.

FACULTY RECEIVES FUNDING TO PROBE ROOTS OF ETHNIC CONFLICT

Three of the law school's faculty members – Professors Sujit Choudhry, Karen Knop and Ayelet Shachar – have been chosen to be part of a team of U of T researchers that will look at the causes of ethnic conflict and suggest policy prescriptions that promote democracy and peace. The Social Sciences and Humanities Research Council of Canada announced in late April $2.5 million in funding through 2010 for the major collaborative research initiative which will be headquartered at Queen's University. "Ethnic conflict is one of the most severe problems in the world today, with enormous destructive potential. We need to understand a lot more about what causes it and in particular we need to think a lot more about ways we might manage it," said Professor Richard Simeon, who is cross-appointed to the Faculty of Law and Department of Political Science, and who is co-ordinating U of T's involvement. Beyond Canada's borders, collaborating institutions include the European Centre for Minority Issues and the Club de Madrid, an association of former presidents and prime ministers of democratic countries interested in promoting democracy. Closer to home, partners include the Forum of Federations and the Université de Québec à Montréal. Students will also be involved in U of T's effort through participation in conferences and workshops and attendance at a summer school that is still in the planning stages. It is hoped that the project will bring together researchers who tend to work in isolation, and in doing so identify creative solutions that will be valuable to citizens and governments and international agencies.

Professors Ripstein and Shachar Receive Prestigious SSHRC Funding

Professors Arthur Ripstein and **Ayelet Shachar** have each been honoured with a significant grant from the Social Sciences and Humanities Research Council to research and write substantial books for publication. Ripstein, who is cross-appointed to the Faculties of Law and Philosophy, intends to write a book about Kant's legal and political philosophy. "Kant's account runs contrary to the dominant strand in political philosophy, which regards the use of force as secondary to the questions of the moral obligations that people have," says Ripstein. "My aim is to write a book that will develop and defend Kant's distinctive account of the relation between authority and coercion." Shachar, who will teach at Stanford Law School in 2006-07, is penning a provocative new book on "citizenship" which will critically evaluate the reliance on circumstances of birth in defining access to political membership. "The book develops an account of citizenship as inherited property," says Shachar. "I argue that membership must be assessed not only in terms of its identity values (as is the standard case in the literature) but also in terms of its distributional consequences in an unequal world." Both books are expected to be published some time in 2006/07 and promise to make a major contribution to the literature in these areas.

(T-B): Profs. Arthur Ripstein and Ayelet Shachar

DEAN'S BARBECUE

The traditional Dean's Barbecue to celebrate the end of the school year was held on April 28 on a dazzling spring day. With Dean Mayo Moran graciously serving up hot dogs and burgers, students soaked up the golden rays and took time to relax with faculty and friends, wrapping up another successful academic year.

LAW AND LITERATURE COLLOQUIUM BOTH SUBSTANTIVE AND ENTERTAINING

Justice James Farley of the Superior Court of Ontario

On March 10, 2006, over 180 people packed the Bennett Lecture Hall for the Sixth Colloquium of the Chief Justice of Ontario (CJO)'s Advisory Committee on Professionalism hosted by the U of T Faculty of Law. The theme of the Colloquium was Law and Lawyers in Literature and Film. The event was organized by Justice Paul Perell on behalf of the CJO and Associate Dean Lorne Sossin. The presentations covered law and literature, judgment writing, the public's views and perceptions of lawyers as revealed in literature and film, the moral dilemmas associated with representing the guilty, the lawyer as anti-hero, and the drama and theatrics of advocacy. The presentations were both substantive in their intellectual engagement and also excellent entertainment. "In every possible way, this colloquium was a success," said Justice Perell. Speakers included Professors Cossman, Morgan and Fernandez from the Faculty of Law, Professor Greig Henderson from the Department of English at U of T, Justices James Farley, Gordon Kileen and John Laskin, lawyers Julian Porter and Dermot Nolan, Treasurer of the Law Society Gavin McKenzie, noted actress Kate Trotter and keynote speaker Professor Michael Asimow from the UCLA School of Law. The Colloquium builds on the Faculty's successful Law and Literature speaker series and the development of a combined JD/MA degree in English expected to commence in 2007.

International Dignitaries Visit Law School

IN EARLY 2006, THE FACULTY OF LAW WAS HONOURED TO WELCOME THE FORMER JUSTICE OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA, RICHARD J. GOLDSTONE, AND THE AMBASSADOR FOR INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY, U.S. DEPARTMENT OF STATE, AMBASSADOR DAVID A. GROSS.

The Hon. Richard Goldstone

Speaking before a packed audience of students, faculty and alumni this past January, former Justice of the Constitutional Court of South Africa (1994 to 2003), Richard Goldstone, gave the 2006 David B. Goodman Lecture. His topic – the first decade of the Constitutional Court of South Africa – included an insightful contrast and comparison of the Court's most important decisions during that time, with Canadian decisions and laws. In February 2006, the law school was once again privileged to present the 2006 Grafstein Lecturer in Communications, Ambassador David A. Gross, U.S. Coordinator for International Communications and Information Policy in the Bureau of Economic and Business Affairs, United States Department of State. Ambassador Gross, who in 2000 joined the Bush-Cheney presidential campaign as National Executive Director of Lawyers for Bush-Cheney, discussed the impact of new technologies on the rise of freedom and political liberty around the world, and Internet governance issues recently debated at the UN "heads of state" World Summit on the Information Society. Both lectures were videotaped and are available to be viewed on the Faculty's website at www.law.utoronto.ca.

Prof. Brenda Cossman

Literature Through the Lens of Law

The series continued this year with Profs. Carol Rogerson and Brenda Cossman discussing Lionel Shriver's *We Need to Talk about Kevin*. Other events in this series included the discussion of Jane Austen's *Pride and Prejudice* by Prof. Lorraine Weinrib; Mordecai Richler's *The Apprenticeship of Duddy Kravitz* by Prof. Ed Morgan; *The Reader* by the author and visiting Prof. Bernhard Schlink; and Ian McEwan's *Saturday* by Profs. Karen Knop, Jutta Brunnée and Frédéric Mégret.

U OF T LAUNCHES NEW JUDICIAL RESEARCH ASSISTANCE PROGRAM

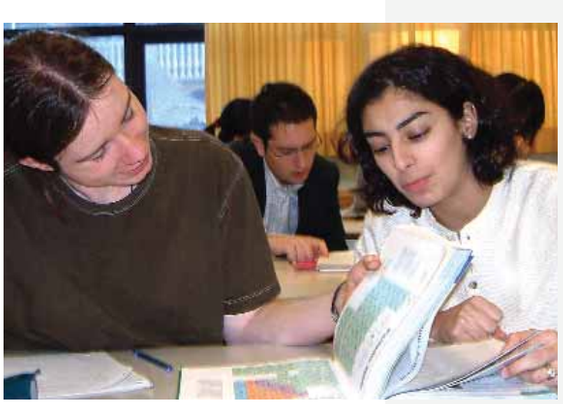
A new program launched in the fall in conjunction with the Ontario Court of Justice provided several third year students with the opportunity to work as part-time Judicial Research Assistants during their final year of legal studies. Spearheaded by Associate Dean Lorne Sossin and Professor Martha Shaffer at the Faculty of Law, the program ran from September to December 2005 at the Old City Hall courthouse and from January to April 2006, at the courthouse at 311 Jarvis Street. Credited with ensuring the success of the program are three Ontario Court of Justice judges, Chief Justice Brian Lennox, Justice Robert Bigelow (Regional Senior Judge for Toronto), and Justice Penny Jones (Local Administrative Judge for 311 Jarvis Street), as well as Allen Edgar, Research Counsel for the Ontario Court of Justice. The students provided research assistance ranging from finding the answers to small and immediate questions that arose during the course of a trial, to writing longer research memoranda relating to criminal and family law for use by the court. Students also observed court proceedings, and gained a unique perspective on the judicial process to bring back to the faculty.

Inner City High School Program Continues its Success

THIS PAST SPRING, we reported the launch of Canada's first law and justice-themed high school outreach program, Law in Action Within Schools (LAWS), at two nearby high schools, Central Technical School and Harbord Collegiate Institute. The partnership between the U of T, Faculty of Law and the Toronto District School Board combines law-related studies with hands-on experience for students who may face barriers to achieving their academic, career, or life goals. LAWS aims to help students develop the skills, knowledge and experience required to succeed in high school and achieve post-secondary education. At Central Tech, selected grade 10 students began their first year of a three-year program (grades 10 to 12) that integrates law and justice themes into their core classes. At Harbord Collegiate, nearly 250 grade 10 students took a Civics/Careers class enhanced with LAWS workshops and activities.

Events throughout the school year have included a workshop facilitated by cast and producers of the CBC program, "This is Wonderland," and a field trip to Old City Hall courthouse to observe how the criminal justice system works. In addition, law students have offered mentoring and academic support to the students through a weekly, after-school tutoring program at both schools. The response to the LAWS program has been overwhelmingly positive. "One of our students with a poor attendance record last year now comes to class every day because he is excited about what he is learning," said one guidance counsellor. Teachers are also reporting a real "buzz" and excitement at the schools and the feeling that the experience will have a profoundly transformative impact on their students. Other successful events included a global citizenship conference held at the Faculty where law students facilitated workshops about human rights, a debate on Sharia law facilitated by faculty member Professor Anver Emon, and a workshop on environmental law and water quality. To build on their classroom experiences, this summer 25 LAWS high school students are participating in paid 3-week placements at law-related workplaces.

"One of our students with a poor attendance record last year now comes to class every day because he is excited about what he is learning," said one guidance counsellor.

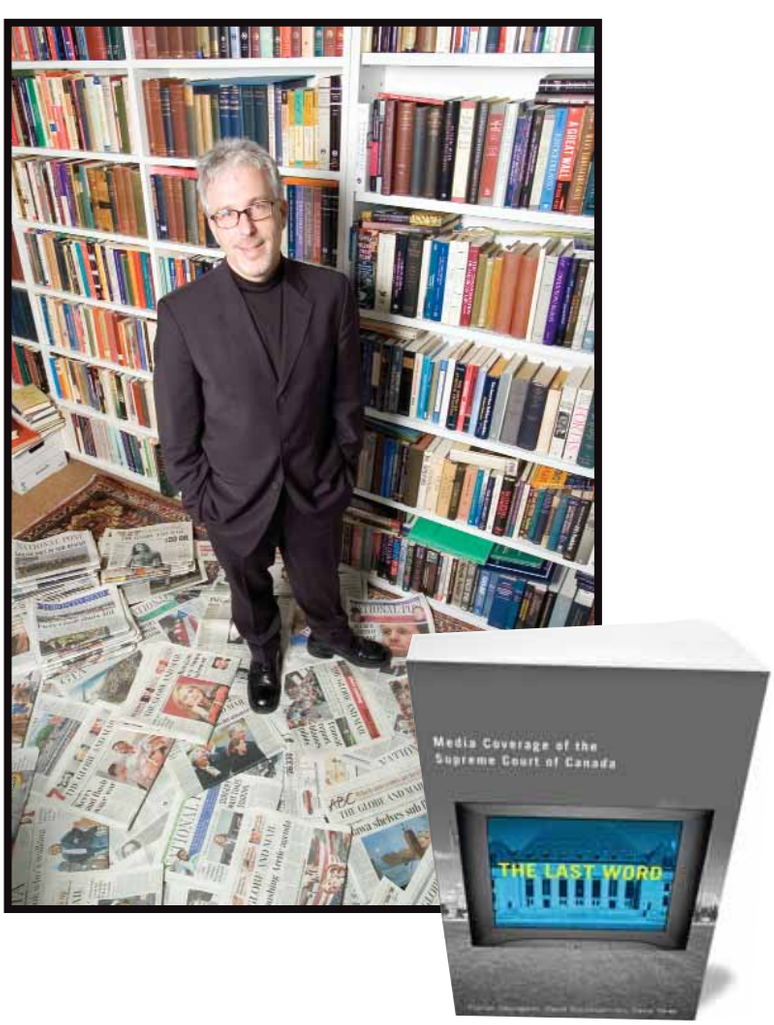


PBSC Welcomes Newest Addition to Team

PRO BONO STUDENTS CANADA (PBSC) is pleased to announce the newest member of their team, U of T law grad Noah Aiken-Klar '03, who joins PBSC as Associate National Director. Noah will work closely with National Director, Pam Shime, to oversee the rapidly growing national public interest law program. As a student at law school, Noah worked with PBSC and made a significant contribution to building the national and the U of T Law Faculty pro bono programs. He graduated in 2003 as valedictorian of his class, and went on to clerk at the Ontario Superior Court and then to practice as a litigator at Lax O'Sullivan Scott LLP in Toronto. The law school and PBSC are thrilled that Noah's energy and dedication will be put to use for the PBSC program. If you are interested in finding out more about the program or would like to contact him, Noah can be reached at noah.aikenklar@probonostudents.ca or 416-946-0519.

Book Launch Features Journalists, Judges and Academics

ON THURSDAY, MARCH 23RD a special "Meet the Authors" Book Launch featured Professor David Schneiderman's ground-breaking new book *The Last Word: Media Coverage of the Supreme Court of Canada* (University of British Columbia Press). Written by Schneiderman, along with Florian Sauvageau, (Université Laval), and David Taras, (University of Calgary), *The Last Word* is the first book of its kind to examine media coverage of the Supreme Court of Canada. The launch included a formal panel discussion moderated by Professor Sujit Choudhry, and featured Schneiderman who expanded upon the book's principal themes. "Journalists and news organizations decide which court rulings they will cover, and how," says Schneiderman. "Once the justices hand down rulings, they lose control of the message, and journalists, in effect, have the last word." Based upon analysis of print and electronic media in the English and French languages and interviews with many journalists and justices of the Supreme Court of Canada, the book tracks a year of media coverage of Supreme Court rulings and takes an in-depth look at a number of key cases over the last decade. The book provides important insights not only for judges and journalists, but also for the public who rely upon news coverage for an understanding of their constitutional rights. Schneiderman was joined on the panel by *Globe and Mail* Justice reporter, Kirk Makin, one of Canada's leading print journalists, who discussed his reactions to the book, as well as Justice Robert Sharpe of the Ontario Court of Appeal, who offered insightful comments from his vantage point as a former Executive Legal Officer at the Supreme Court. Professor Robert Vipond, Chair of U of T's Department of Political Science, also provided comments from his perspective as a leading student of Canadian constitutional politics.



(L-R): Prof. Lorraine Weinrib, Chief Justice Adel Omar Sherif, Prof. Anver Emon

DEPUTY CHIEF JUSTICE OF EGYPT VISITS FACULTY

ON APRIL 2-3, 2006, the Faculty of Law welcomed Deputy Chief Justice of the Egyptian Supreme Constitutional Court, Adel Omar Sherif, who was visiting Canada as part of a special initiative to develop cooperation between the Canadian and Egyptian judiciaries. During his brief visit to the law school, Justice Sherif met with faculty and students to share his perspectives on the administration of justice, law and development, and in particular the role of law and religion in Egypt – a country which holds that Islamic law is the source of law in the country. Sherif's comments are part of a larger doctrinal debate in much of the Muslim world, in which Egypt has taken the lead. Some scholars of Islamic law have written that calls among Muslims to "return to the Sharia" are delusions. They argue that Islamic law is a tradition that once existed in the medieval period, but has fallen apart with the rise of the modern nation state, centralized legislative processes, and the dismantling of institutions of Islamic legal education. Sherif disagreed. According to Sherif, there are core principles in Islamic law that are certain, clear, and inviolable, and no legislation can violate these principles. But beyond this core, all other issues are subject to legislative debate and deliberation.

The Egyptian judiciary, he suggested, contributes to the ongoing development of Islamic law in the modern nation state. While there are various medieval rules of law that can be found in centuries old treatises of law, according to Sherif, those treatises do not speak to the contemporary realities on the ground, and therefore must be engaged anew. He left students and faculty with an image of Islamic law different from that which predominates in the popular imagination. For the Egyptian Supreme Constitutional Court, Islamic law is not about a doctrine of a by-gone era, but an enterprise that is constantly developing and responding to the needs of a changing society.

ALUMNI ACHIEVEMENTS 2006

IN FEBRUARY 2006... **Tony Clement '86** was appointed Minister of Health and Minister for the Federal Economic Development Initiative for Northern Ontario in the cabinet of Prime Minister Stephen Harper. Justice **John Major '57** received the 2006 Distinguished Alumnus Award from the U of T Faculty of Law. **The Hon. Bill Graham '64** was appointed interim leader of the Federal Liberal Party, stepping in while the party selects a new leader to replace former Prime Minister Paul Martin '64. **Alasdair Roberts '84,** associate professor of public administration in the Maxwell School of Citizenship and Public Affairs in New York, published *Blacked Out: Government Secrecy in the Information Age* (Cambridge University Press). **IN APRIL 2006...** **Anita Anand '96** was awarded a three-year grant from SSHRC for the study: "Mandatory vs. Voluntary Corporate Governance and the Impact of Firms' Governance Choices on Capital Acquisition." **IN MAY 2006...** **The Hon. Bob Rae '77** officially announced his candidacy for the leadership of the Federal Liberal Party. **The Hon. John Major '57** was selected to conduct the Air India Inquiry initiated by Stephen Harper's government and was honoured at a special Faculty of Law Alumni Dinner in Calgary. **Clay Horner '83** was voted as one of the 15 most highly regarded M&A lawyers in the world by *L'expert* magazine. **Poonam Puri '95,** professor at Osgoode Hall Law School, was named one of Canada's "Top 40 under 40" by the Caldwell Partners International. The Honourable **Frank Iacobucci '89** was appointed chair of the Higher Education Quality Council of Ontario. **Judith Wolfson '80** was appointed University of Toronto's Vice-President, University Relations. **Jonathan T. Fried** '77 was appointed Executive Director for Canada, Ireland and the Caribbean at the International Monetary Fund, Washington, DC.

EFFECTIVE SEPTEMBER 1, 2006, Professor Colleen Flood will be the new Scientific Director of the Canadian Institutes of Health Research (CIHR)'s Institute of Health Services and Policy Research (CIHR-IHSPR). She is the first non-scientist to hold this prestigious appointment. CIHR is comprised of 13 Institutes, each led by a Scientific Director responsible for championing health research at the highest levels of international excellence. The Institute of Health Services and Policy Research (CIHR-IHSPR) is dedicated to supporting innovative research in order to improve the way health care services are organized, regulated, managed, financed, paid for, used and delivered, in the interest of improving the health and quality of life of all Canadians. "Dr. Colleen Flood is a welcome addition to the CIHR leadership team," said Dr. Alan Bernstein, President of the CIHR. "Her accomplishments in health law and policy will build upon the solid foundation created by the Institute of Health Services and Policy Research over its first phase of development."

PROF. COLLEEN FLOOD APPOINTED SCIENTIFIC DIRECTOR OF CANADA'S HEALTH RESEARCH AGENCY

As Scientific Director, Professor Flood will work with colleagues in disciplines that span the breadth of health services research across Canada. She will seek to create optimal conditions for a generation of innovative and excellent research that will be relied on by decision-makers in Canada and internationally. The Institute, currently housed at the University of British Columbia, will move to the University of Toronto in September where Dr. Flood is an Associate Professor and Canada Research Chair in Health Law & Policy at the Faculty of Law. She will maintain a reduced teaching role at the Faculty and will continue to be a leading contributor to health law research in Canada.

Flood is the author of numerous health law articles in prestigious journals such as the Canadian Medical Association Journal; the Alberta Health Law Journal; the Journal of Law, Medicine and Ethics; the Journal of Health Politics, Policy and Law; the Canadian Business Law Journal; the Health Law Review; and Policy Matters. She is also the author of many book chapters and the author/editor of four books: *International Health Care Reform: A Legal, Economic and Political Analysis* (London: Routledge, 2000); co-editor (with Jocelyn Downie and Tim Caulfield) of *Canadian Health Law and Policy* (2nd ed.) (Toronto: Butterworths, 2002); co-editor (with Lorne Sossin and Kent Roach) of *Access to Care, Access to Justice: The Legal Debate Over Private Health Insurance in Canada* (Toronto: UTP, 2005); and editor of *Just Medicare: What's In, What's Out, How We Decide* (Toronto: UTP, April 2006). In 2005, she was appointed as an editor with the new IHSPR-supported journal, Healthcare Policy.

Innovation Law Expert Leaves Faculty of Law to join Blakes

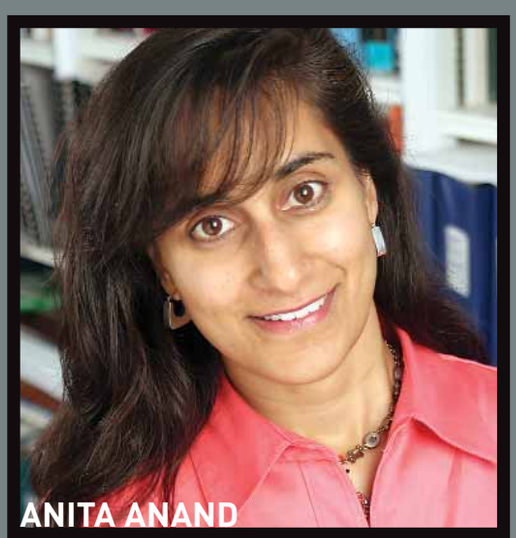
After more than five years of inspired leadership of the Faculty's Centre for Innovation Law and Policy, Executive Director, Richard Owens, has returned to legal practice, joining Blake, Cassels & Graydon LLP. Richard will be a Partner in Blakes' Information Technology Group. "The Centre has been very fortunate to have had Richard Owens as its Executive Director since February, 2001," said Dean Mayo Moran. "His departure marks a significant loss for the Faculty. However, I am delighted that he will continue his affiliation with the Centre to help ensure the continuity of its programs and activities."

The Centre was established in 1999 through the generous assistance of the Ontario Government, University of Toronto and Osler, Hoskin and Harcourt. Over the past five years, Richard developed and oversaw the numerous programs that have constituted the Centre, including support for teaching and research, policy development, and advisory services relating to innovation law. He was also a respected colleague to the many faculty scholars who are affiliated with the Centre. "Richard realized that innovation law was about more than technical rules related to the internet, IP, and copyright," said Prof. Trudo Lemmens. "He supported the integration of social and ethical dimensions of innovation into the work of the Centre."Law Professor Arthur Ripstein said: "Richard was a wonderful neighbour to have across the hall. He had interesting things to say about almost any topic that made it into the hallway conversations of the Flavelle attic." Prior to joining the Centre, Richard represented high-technology companies and financial institutions in matters involving licensing, strategic alliances and joint ventures, privacy, financing, outsourcing, electronic commerce, public/private partnerships, and Internet issues.

Over his career, he has written and published widely on the law of information technology, privacy, and the regulation of financial institutions. His move marks an important addition to the national Information Technology group at Blake Cassels, according to firm Chairman, Jim Christie. "Richard is well-known in the technology area nationally and internationally," said Christie. "His expertise and experience, both as a practitioner and an academic, will add significant depth to our national IT practice and I welcome Richard to Blakes."


MARIANA MOTA PRADO


NEHAL BHUTA


ANITA ANAND

New Faculty Members

The Faculty of Law is excited to welcome four outstanding new scholars that will enhance the areas of development and regulated industries, corporate and bankruptcy law, international human rights law, criminal law, ethics and professionalism.

MARIANA MOTA PRADO

Originally from Brazil, where she received her LL.B. from the University of São Paulo in 2000, Mariana Mota Prado has spent the past six years developing an impressive expertise in law and development and regulated industries. "I was born and raised in a developing country, and observed the problems associated with underdevelopment and poverty," says Mariana. "I am particularly interested in what makes some countries rich and others poor, and how we can promote development in a systemic and sustainable way." Following the completion of her law degree, Mariana spent a year conducting research for the Law and Democracy Project with the Brazilian Center of Analysis and Planning (CEBRAP) in Brazil. She then received her LL.M. at Yale in 2002, and in the summer of 2004, she worked for the Private Participation in Infrastructure Database Project at the World Bank in Washington D.C. She is currently Tutor-in-Law and J.S.D. candidate at Yale Law School, and despite living in New Haven, has managed to continue her research for CEBRAP, including publishing two co-edited books. She is excited to be joining the Faculty in September where she will be teaching courses in contracts, law and development, regulated industries and administrative law.

NEHAL BHUTA

In January, Nehal Bhuta will join the law school and teach international human rights. Following completion of his law degree from the University of Melbourne in 1999, an LL.M. from the New York University School of Law, and an M.A. from the New School for Social Research in New York, Nehal worked at Human Rights Watch and advised Oxfam Australia and two East Timor human rights organizations about international justice mechanisms for East Timor. Since 2003, Nehal has served as a Consultant on Iraq to the International Centre for Transitional Justice in New York. He also co-led a field mission to Iraq for a lengthy study that involved interviewing hundreds of Iraqis to gauge their attitudes towards transitional justice and reconciliation. Since that time, he has continued to keep a close watch on the development of the Iraqi Special Tribunal and in late 2005, once again travelled to Iraq. He has published widely on refugee law, international criminal law, transitional justice and indigenous rights in Australia. At U of T, Nehal hopes to combine his theoretical interests with an ongoing engagement with the practice of human rights. "The U of T Faculty of Law is far ahead of many U.S. and Canadian law schools in this area," says Nehal. "I am very excited about working with such a dynamic group of scholars."

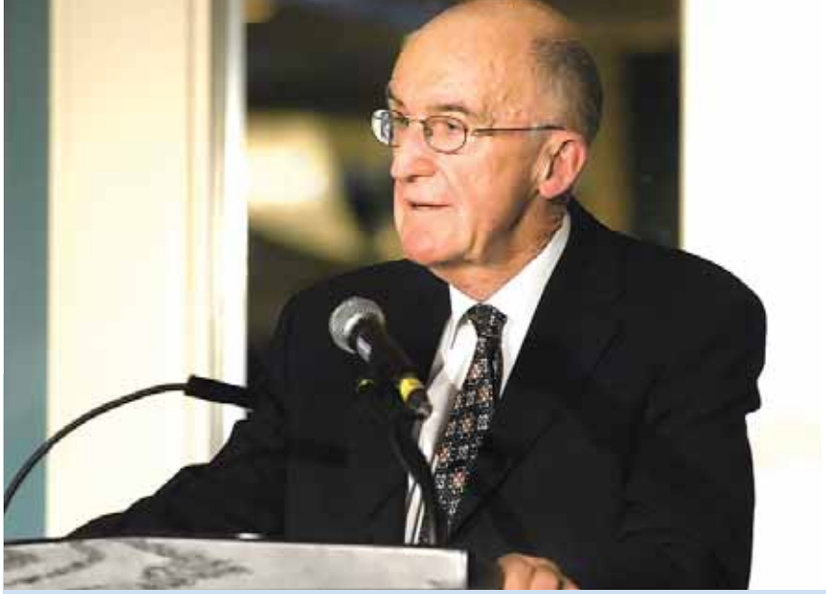
ANITA ANAND

After six years at Queen's University Law School as an Assistant Professor (1999-2003) and an Associate Professor (2003-2006), Anita Anand will join the U of T Faculty of Law and teach courses in securities and bankruptcy law. "U of T has a vibrant workshop culture and has the leading law and economics program in the country," said Anita. "I am looking forward to immersing myself in this environment." Anita holds an Honours B.A. in Political Studies from Queen's University, an Honours B.A. in Jurisprudence from Wadham College at Oxford University, an LL.B from Dalhousie University and an LL.M. from the University of Toronto. In 2005-2006, she was the recipient of a Canada-U.S. Fulbright Scholarship and a Visiting Olin Scholar in Law and Economics at Yale. She is the recipient of two research grants from the Social Sciences and Humanities Research Council of Canada (SSHRC) and three awards from the Foundation for Legal Research. Her current research focuses on the governance of organizations and securities offerings. She has published widely, and was recently awarded a three-year grant from SSHRC for the study: "Mandatory vs. Voluntary Corporate Governance and the Impact of Firms' Governance Choices on Capital Acquisition."

ANITA ANAND
NEHAL BHUTA
MICHAEL CODE
MARIANA MOTA PRADO

MICHAEL CODE

The Faculty of Law is very pleased to announce that criminal law expert, Michael Code, will be joining the faculty this July. He will teach in the field of criminal law, criminal procedure and evidence and will work on developing new initiatives in the fields of ethics, professionalism and advocacy. Michael completed his LLB at U of T in 1976, and his LLM in 1991. He has enjoyed a multi-faceted career, having worked as defence counsel, Crown counsel and Assistant Deputy Attorney-General, and as counsel to many public entities. He is one of this country's most outstanding appellate lawyers and has argued many ground-breaking Charter cases at the Supreme Court and the Court of Appeal for Ontario. Recently, he served as defence counsel in the "Air India" terrorism trial in Vancouver. Michael has written extensively on criminal law and criminal procedure and is currently working on a project on the mega-trial. Michael has also taught law for many years, including a course at U of T in Criminal Procedure. "We are thrilled to have such an outstanding scholar and advocate join the faculty," said Associate Dean, Lorne Sossin. "Michael's expertise in criminal law, ethics and professionalism is unsurpassed in this country, and we look forward to working with him to develop new courses and programs."



Justice John C. Major '58 accepts the 2006 Distinguished Alumnus Award in recognition of his long and distinguished career on the Supreme Court of Canada (1992 to 2005). On February 2, 2006, Justice Major delighted the crowd of more than 400 alumni with his characteristic wit and charm, acknowledging the support of his closest friends and colleagues, many of whom were in the room.

PROF. GAUDREAULT-DESBIENS RETURNS TO MONTREAL

This summer, Professor Jean-François Gaudreault- DesBiens will leave the U of T Faculty of Law to take up a position at the Faculty of Law of the Université de Montréal, where he has been awarded a Canada Research Chair on the study of North American and comparative legal and cultural identities. Prior to joining the law school in 2002, he practiced commercial law in Québec before joining the McGill University Faculty of Law as an Assistant Professor and then Associate Professor. "Jean-François has been a wonderful presence and has contributed enormously to the life and work of the faculty in so many different ways," said Dean Mayo Moran. "We will all miss him enormously, but we will find many ways to continue our relationship with him."

Over the past four years, Jean-François has worked extensively on the law's apprehension of identity-related phenomena, both from an epistemological angle and from a constitutional law angle. His most recent work focuses on federalism, in a Canadian and comparative perspective, on the legal theory of federalism, and, more generally, on "complex states" where different nationalist discourses and identity narratives co-exist and often compete with each other. Yet his influence at the law school extended well beyond his exceptional scholarly contributions. He was a friend and respected colleague to many faculty members, including Professor Sujit Choudhry who said: "Jean-François was a remarkable presence at the Faculty. At the heart of the study of the Canadian constitution is the relationship between Québec and the rest of Canada. Jean-François' position as the leading Québec constitutional scholar of his generation put us at the very centre of those debates." Jean-François has published two books, *Le sexe et le droit. Sur le féminisme juridique de Catharine MacKinnon* and *La liberté d'expression entre l'art et le droit* and is the co-editor of several books. We are privileged to have had the benefit of his four years at the Faculty and very much look forward to his continued relationship with the law school as he pursues his new endeavor.

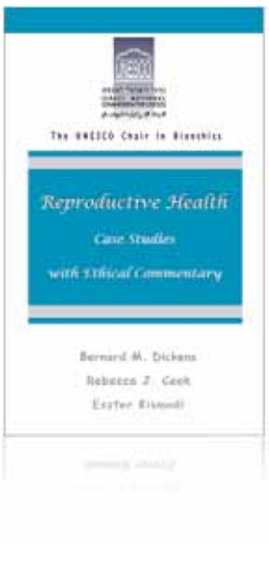
NEW FACULTY BOOKS

INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED IN CANADA

Professor Jutta Brunnée (with Hugh M. Kindred, Phillip M. Saunders, Robert J. Currie, Ted L. McDorman, Armand L.C de Mestral, Karin Mickelson, René Provost, Linda C. Reif, Stephen J. Toope and Sharon A. Williams)

ISBN: 1-55239-162-0; Publisher: Emond Montgomery Publications $150.00 (HC)

FROM THE PUBLISHER: International law is the only field of law in which students are expected to digest such a broad sweep of ideas, legal concepts, institutions, principles, and rules within the limited span of a single course. The authors, as teachers of international law, offer this volume for just such an introduction. They present the fundamental principles and processes of the international legal system, exploring them through as many areas of its operation as the practical limits of the book allow. This seventh edition is primarily designed for students and others who experience the world from a Canadian perspective. While the text includes international documents and decisions, it also draws extensively on the practice of international law, chiefly as interpreted and applied in Canada. The book is supported by a website (www.emp.ca/intlaw7) that enhances the use of the printed text by the provision of additional international legal resources, copies of the treaties, United Nations documents, and an electronic index that enables a keyword search of the entire text and footnotes.

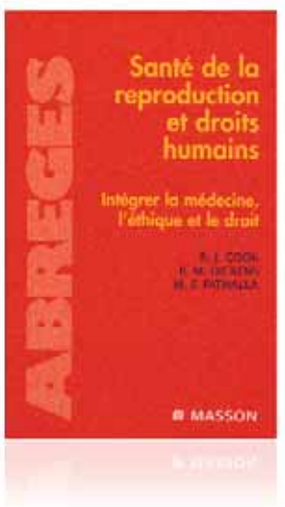


REPRODUCTIVE HEALTH: CASE STUDIES WITH ETHICAL COMMENTARY

Professors Bernard M. Dickens, Rebecca J. Cook (with Eszter Kismodi)

ISBN: 965-7077-33-8; Publisher: International Center for Health, Law and Ethics, University of Haifa

FROM THE PUBLISHER: This booklet should be of particular interest to doctors, medical students, other health care practitioners, bioethicists, and all those who train them. It contains 31 case studies drawn from real-life experiences with ethical commentary by the authors. The commentary is designed to assist in the identification of key ethical considerations to resolve conflicting values in reproductive health care. Ethical decision-making requires that central elements underlying a decision be identified, and ethical reasons be provided for favouring one approach over another. Since ethical judgments are not usually black or white, ethical or unethical, there can be more than a single way to behave ethically, depending on the ethical principle to which priority is given. To request free copies of this booklet, please contact Professor Amnon Carmi, the UNESCO Chair in Bioethics at the University of Haifa (acarmi@research.haifa.ac.il).

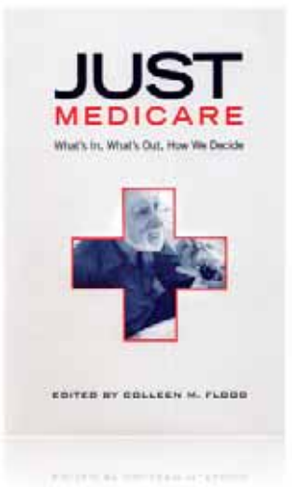


SANTÉ DE LA REPRODUCTION ET DROITS HUMAINS: INTÉGRER LA MÉDECINE, L'ÉTHIQUE ET LE DROIT

Professors Rebecca J. Cook and Bernard M. Dickens (with Mahmoud Fathalla)

ISBN: 2-294-02164-9; Publisher: Masson $67.95 (SC)

FROM THE PUBLISHER: As a testament to the success and international relevancy of *Reproductive Health and Human Rights: Integrating Medicine, Ethics and Law,* this book has been translated and revised into French and Chinese, adding to the English, Spanish and Portuguese editions. Plans are underway for the translation of Part II, containing 15 case studies, into Arabic with commentary from Islamic scholars. First published in April 2003 by Oxford University Press, the books are being used for teaching in medical and law schools and for training in health professional organizations involved in reproductive and sexual health. Plans are underway to post the detailed table of contents, introductory chapter and a case study, with an updated section for the book on the Faculty of Law's Women's Human Rights Resources (WHRR) www.law-lib.utoronto.ca/diana/.



JUST MEDICARE: WHAT'S IN, WHAT'S OUT, HOW WE DECIDE

Edited by Professor Colleen M. Flood

ISBN: 0-8020-8002-2; Publisher: University of Toronto Press $65.00 (HC)

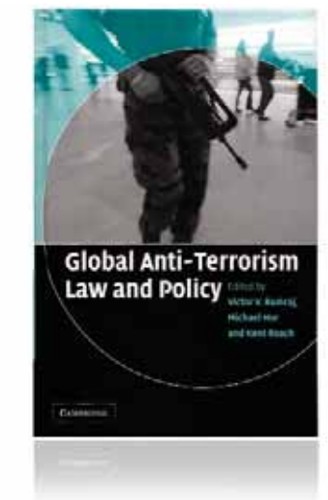
FROM THE PUBLISHER: The most important issue facing Canadian health care today is access to care – what services should be available to Canadians and how these services are best managed. There is growing concern over waiting times, the aging population, and demand for expensive new treatments, while costs continue to spiral. But despite the pre-eminence of access to health care as a social, political, and economic issue, little has been written on how decisions are made about what health care services are publicly funded, who makes those decisions and what principles guide that decision-making. This volume of essays explores the diverse means by which law influences what is in and out of publicly funded Medicare in Canada, illuminating from a Canadian and international perspective, the challenges we face in ensuring a just and equitable health care system.

LAW AND ETHICS IN BIOMEDICAL RESEARCH: REGULATION, CONFLICT OF INTEREST, AND LIABILITY

Edited by Professor Trudo Lemmens (with Duff R. Waring, York University)

ISBN: 0-8020-8643-8; Publisher: University of Toronto Press $65.00 (HC), $35.00 (SC)

FROM THE PUBLISHER: Law and Ethics in Biomedical Research uses the Gelsinger case as a touchstone, illustrating how three major aspects of that case – the flaws in the regulatory system, conflicts of interest, and legal liability – embody the major challenges in the current medical research environment. The editors have brought together top scholars in the field to examine existing models of research review and human subject protection. They demonstrate why these systems are in need of improvement, and explore how legal and regulatory means can be used to strengthen the protection of research subjects and safeguard the integrity of research. The volume also addresses the subject of conflict of interest, paying particular attention to the growing commercialization of medical research, as well as the legal liability of scientific investigators, research institutions, and governmental agencies. Legal liability is a growing concern in medical research and this study is one of the first to explore the liability of various parties involved in the research enterprise.

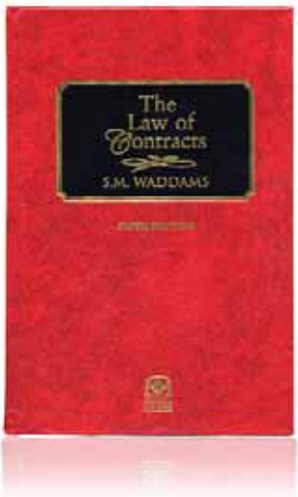


GLOBAL ANTI-TERRORISM LAW AND POLICY

Edited by Professor Kent Roach (with Victor V. Ramraj and Michael Hor)

ISBN: 0-521-85125-4; Publisher: Cambridge University Press $160.00 U.S. (HC)

FROM THE PUBLISHER: All indications are that the prevention of terrorism will be one of the major tasks of governments and regional and international organizations for some time to come. In response to the globalized nature of terrorism, anti-terrorism law and policy have become matters of global concern. Anti-terrorism law crosses boundaries between states and between domestic, regional and international law. They also cross traditional disciplinary boundaries between administrative, constitutional, criminal, immigration and military law, and the law of war. This collection is designed to contribute to the growing field of comparative and international studies of anti-terrorism law and policy. A particular feature of this collection is the combination of chapters that focus on a particular country or region in the Americas, Europe, Africa, and Asia, and overarching thematic chapters that take a comparative approach to particular aspects of anti-terrorism law and policy, including international, constitutional, immigration, privacy, maritime, aviation, and financial law.



THE LAW OF CONTRACTS

Professor Stephen A. Waddams

ISBN: 0-88804-450-X; Publisher: Canada Law Book $160.00 (HC)

FROM THE PUBLISHER: This classic work looks beyond the surface rules of the complex area of contract law to identify the underlying conflicting principles. It has been cited repeatedly by the courts, including the Supreme Court of Canada. This fifth edition has been revised and updated to incorporate all the latest developments in contract law. Hundreds of new cases and issues are analyzed including five major Supreme Court of Canada cases and international cases that could potentially affect Canadian jurisprudence. The issues include: tender cases, duty of good faith, limitation of liability clauses, notional severance, municipal immunity from contractual liability, specific performance, exemplary and punitive damages, and damages for mental distress for breach of contract. This book Includes more than 4,000 cases and delivers a clear explanation and analysis of the law and its applications.

FOCUS

1868

Women were refused the right to vote

"Women are under a legal incapacity to vote at elections. What was the cause of the exclusion, it is not necessary to go into: but, admitting that fickleness of judgment and liability to influence have sometimes been suggested as the ground of exclusion, I must protest against its being supposed to arise in this country from any underrating of the sex either in point of intellect or worth. That would be quite inconsistent with one of the glories of our civilization, the respect and honour in which women are held."

– Chorlton v. Lings [1868], L.R. 4 C.P. 374 (Sir James Easte Willes)

1873

Women were restricted from practicing law

"I would put within the range of possibilities though by no means a commendable one, the admission of a woman to the profession of solicitor or to that of avoue, but I hold that to admit a woman and more particularly, a married woman as a barrister, that is to say, as a person who pleads cases at the bar before judges or juries in open court and in the presence of the public, would be nothing short of a direct infringement upon public order and a manifest violation of the law of good morals and public decency."

– Langstaff v. Bar of Quebec [1915], 47 R.J.Q. 131 at 139, Superior Court (Mr. Justice Saint-Pierre)

1930

Women were restricted from sitting on Canada's Senate

"it would be dangerous to assume that by the use of the ambiguous term "persons" the Imperial Parliament meant in 1867 to bring about so vast a constitutional change affecting Canadian women, as would be involved in making them eligible for selection as Privy Councillors."

– The "Persons Case": Re Section 24 of the B.N.A. Act [1928] 4 D.L.R. 98; Reversed [1930] 1 D.L.R. 98, Supreme Court of Canada (Anglin, C.J.C.)

WOMEN LAW & SOCIAL CHANGE

"The history of the struggle for human rights from the eighteenth century on has been the history of men struggling to assert their dignity and common humanity against an overbearing state apparatus. The more recent struggle for women's rights has been a struggle to eliminate discrimination, to achieve a place for women in a man's world, to develop a set of legislative reforms in order to place women in the same position as men. It has not been a struggle to define the rights of women in relation to their special place in the societal structure and in relation to the biological distinction between the two sexes. Thus, women's needs and aspirations are only now being translated into protected rights. The right to reproduce or not to reproduce which is in issue in this case is one such right and is properly perceived as an integral part of modern woman's struggle to assert her dignity and worth as a human being."

R. v. Morgentaler [1988] 1 S.C.R. 30 (Wilson, J.)

The Women's Court of Canada: Equality Rights Theory at Work

BY PROF. DENISE RÉAUME

Including an equality rights provision (s. 15) in the Canadian Charter of Rights and Freedoms raised hopes that the formalistic approach characteristic of previous judicial forays into equality matters would be relegated to the jurisprudential dustbin. The Supreme Court of Canada decision in *Andrews v. Law Society of B.C.* prompted optimism because of the Court's embrace of an ideal of substantive equality grounding s. 15 and explicit rejection of the formalistic past. Within a decade, however, hope has been converted into frustration. Recent jurisprudence, while still proclaiming substantive equality, has failed to give the concept life.

Out of this frustration a bold thought experiment emerged at a recent LEAF colloquium: what if equality scholars and advocates were to write 'shadow' judgments of the main s. 15 cases and put our own theories of equality to work in judgment format? Could we convince others that our idealism could also be realistic – that equality could be given more substance while still observing recognized forms of legal argument?

Thus was born the Women's Court of Canada, a loose and growing collection of equality thinkers from across the country that has joined together to rewrite equality jurisprudence. We are a collection of women, rather than a collectivity. Each judgment is written by an individual or team of authors and is the responsibility of its author(s). Other members of the group provide feedback, but the judgments are not pronouncements of the group as a whole. The aim is to let equality thinkers show the concrete results of applying what they each consider the best account of equality. We do not all agree with one another about the best theory or its best doctrinal shape, but we respect each others' views enough to think that the collection of judgments we produce will provide a rich and illuminating store of argument and analysis.

That we have styled ourselves the *Women's* Court of Canada reflects a commitment to articulate how sex equality can be taken seriously in s. 15 jurisprudence, and our experience of working with gender issues. We have not limited ourselves, however, to cases that have been litigated as sex equality cases. Instead, we aim to uncover the gender issues present in cases analyzed on other grounds, as well as to develop our various accounts of equality in a way that both does justice to sex equality and lays a foundation for a comprehensive approach to the constitutional remedying of all forms of inequality.

My shadow judgment of *Law v. Canada* illustrates this philosophy. *Law* was argued in the 'lower courts' as an age discrimination case, *tout court.* The 30 year old claimant challenged the Canada Pension Plan limitation on eligibility for a pension payable on the death of a contributing spouse to those over age 35 (absent extenuating circumstances) as discrimination based on age – it treats those over age 35 better than those under. This exclusive focus on the age-related differential treatment provides an incomplete picture of the program and its rationale. The inescapable fact is that the vast majority of survivor pension recipients are women, simply because women are more likely than men to outlive their spouse. This part of the CPP was designed with the needs and interests of women in mind and cannot be properly understood or evaluated absent this gendered context. Differences in the working lives of men and women have shaped the benefit from the beginning and are relevant to assessing its constitutionality. Although the social realities of women's exclusion from the workforce were taken into account in the original design of the policy, Parliament has overlooked the hurdles women still face despite increasing participation in paid work.

The Supreme Court of Canada held that the benefit is designed to provide long-term financial security for Canadians who lose a spouse. It would be better to say that the CPP treats a contributor's pension as a family asset, thereby recognizing the joint contribution that spouses make to each other's economic well-being. This characterization better dignifies women's contribution to the family rather than treating women as mere "dependents".

The age cut-off initially recognized that women were less likely than men to be receiving employment income; faced with her spouse's death a woman would need replacement income to make up for the loss of his salary. The use of age instead of recipient's income level, however, means that many who are fully able to provide for their own long-term financial stability still qualify while some of those under the cut-off age may be in greater need, yet are denied. Either the program is significantly flawed, or we must assume that Parliament's concern for the need occasioned by the death of a spouse is a concern for the relative drop in household income that is likely to come in its wake, something likely to affect almost all survivors.

Against this backdrop, the age restriction seems to be grounded not merely in the empirical expectation that survivors below a certain age do not suffer a significant drop in household income following a spouse's death, but rather in the normative requirement that younger survivors should make their own efforts to offset that loss rather than relying on a long-term pension. To paraphrase Margaret Thatcher, younger spouses should just 'get on their bicycles'!

While it may be sensible to tell younger survivors not to expect long-term income support, this does not explain why the CPP has no provision for at least short-term assistance in adjusting to the loss of a spouse's income. Since most surviving spouses, at all age groups, are women, denying any assistance to those under a certain age differentially affects mainly *women* in that age group.

Such a program is constitutional only if this differentiation does not violate the dignity of those affected. Income support is a matter of s. 15 significance not because more money in one's pocket is always a good thing, but rather because in a modern society a certain level of income is vital to keeping a roof over one's head, staying healthy, and joining in social life as an equal. However, the assumption that the loss of a spouse by younger survivors causes no serious financial dislocation, even in the short term, seems to adopt a male norm. It treats as the typical younger spouse someone who is employed and fully self-sufficient. Unfortunately, this description is still more accurate for men than for women.

StatsCan data shows that the employment rate among women is lower than men's in all age categories except those under 24; likewise with the percentage of women in paid work. Even in households with no children, women's workforce participation rate is lower than men's. Women's unemployment rate is also higher for women in every age group once we include those involuntarily working part-time rather than full-time.

Women are still streamed into lower paying jobs, and are often paid less than comparable male jobs. Even unattached women, whose workforce participation is likely to be most like men's, earn less than men. Young women suffer from pay inequity too: women between 35 and 44 earn only 95% of what similarly situated men earn, while women aged 25 - 34 earn only 90% of a male wage. According to recent data, wives' earnings represent only 32% of the income of dual-earner families. Many, even women without children, continue to shoulder the lion's share of household responsibilities to the detriment of their earning capacity.

SINCE MOST SURVIVING SPOUSES, AT ALL AGE GROUPS, ARE WOMEN, DENYING ANY ASSISTANCE TO THOSE UNDER A CERTAIN AGE DIFFERENTIALLY AFFECTS MAINLY WOMEN IN THAT AGE GROUP.

Put bluntly, the old adage that most women are just a divorce away from poverty could easily extend to the death of a spouse. The loss of a male spouse will often precipitate a sharper drop in the surviving female spouse's standard of living than vice versa, and will be harder to make up. It is precisely the female survivor who is likely to face the most exigent circumstances following the death of her spouse: the loss of more than half, perhaps significantly more than half, her previous household income and the need to make substantial investments in her own earning capacity in order to put herself on an even financial keel.

The expectation that women under the age cut-off should support themselves like an able-bodied, childless man is an example of what feminists have come to call "equality with a vengeance." Disadvantaged groups such as women tend either to be subjected to derogatory or paternalistic stereotypes or assumed and required at their own peril to be like men whether they are or not, whether they have been given the chance to be or not, and whether it suits their own aspirations or not. This ignores the real work of achieving equality: clear-sighted examination of the actual conditions of women's lives to determine what they need in order to flourish on their own terms, to live lives of dignity and full participation in society.

The Women's Court of Canada would hold that a survivor pension scheme that has so clearly ignored the social conditions affecting younger women must be found to be discriminatory not only on the basis of age, but also on the basis of sex. Indeed, it is attention to the gender dimension of the program that makes vivid the violation of human dignity entailed by the exclusion from the benefit.

The Women's Court hopes to publish its judgments in the Canadian Journal of Women and the Law as well as create a website for the Court. ■

BY PROF. BRENDA COSSMAN

'The double shift,' 'the glass ceiling,' 'the mommy track.' Women's efforts to balance work and family have given rise to a host of buzz words over the last two decades. Now, it's the 'opt-out revolution.' First coined by Lisa Belkin in an article in the New York Times Magazine in 2003, the term is being used to describe the decision of upper middle class, often professionally trained women to leave the work force and to stay home to care for their children.[1] The phenomenon is one being tracked amongst Ivy League graduates – young women with Princeton, Yale and Harvard M.B.A.'s, J.D.'s and other fancy degrees are trading in their briefcases for diaper bags.

THE 'OPT OUT' REVOLUTION

AND CHANGING NARRATIVES OF MOTHERHOOD

It is a new twist on the recurrent problem of balancing work and family, with some of the most highly trained women with tremendous marketability and earning potential saying that the double shifts and mommy tracks just aren't worth it. So, with the financial backing of high income husbands, these women are choosing to be full-time moms.

There is a considerable debate emerging, however, about how pervasive the practice has become, and whether it should be described as a phenomenon at all. Lisa Belkin, in her New York Times Magazine article, cited US Census statistics to show an increase in the number of children being cared for by stay-at-home mothers. The number of new mothers who return to work fell from 59 to 55 percent in 2000 (U.S. Census). While a decrease of 4% may not seem that significant, it is the first time in decades that the number of working mothers has not increased.

In Canada, there is little hard evidence of an 'opt-out' revolution – with the exception of Alberta. According to Statistics Canada, Alberta is the only province that has seen a steady decline in the number of working mothers in the last decade. In 1995, 7 out of 10 women with children under 6 were working. By 2005, however, that number was 6 out of 10.

Yet, many argue that there is no opt-out phenomenon occurring. Stephanie Coontz, a leading family studies scholar in the U.S., argues that the opt-out revolution is a myth.[2] She cites a range of Census data to counter the claim, noting for example that highly educated women with children under 6 are the least likely group to be out of the labour market, and that any decrease in the workforce participation of mothers has been matched by a similar decrease for both childless women and men.

But, it is not clear the opt-out revolution can or should be measured in terms of statistical data. There is something afoot that may take years to register in hard data. In fact, even if the opt-out revolution is simply a powerful myth, as folks like Coontz persuasively argue, it is a myth with a growing resonance.

Just look at the recent federal election and the popularity of Stephen Harper's child care proposal to provide $1200 to all families with children under the age of six. The proposal – now part of the Conservative Government's first budget – is being marketed as promoting 'choice' in child care. Parents should be able to choose how to care for their children, and all of those choices should be supported. Of course, the reality is that the $1200 a year is a subsidy for stay-at-home parents. Sure, everyone is entitled to it – but it is taxed back. For working parents, it is worth a lot less than $1200, depending on their tax bracket. But, for a stay-at-home parent with no income, it is worth the full amount.

It is extremely popular. And its popularity seemed to come as a complete surprise to the Liberals – now the opposition – who spent years trying to get behind a national child care policy. Critics seem to assume that it is a socially conservative child care policy designed to support and promote the traditional family, with a male breadwinner and a female stay-at-home caregiver. While it is true that many socially conservative organizations, such as Focus on the Family and REAL Women do support the child care allowance, they are not alone.

Rather, there is a new movement of sorts that is neither conservative nor liberal in nature. It is the stay-at-home moms, the women of the opt-out revolution, who have chosen to stay home with their children. They are folks like Kate Tennier, founder of Advocates for Child Care Choice, who want their choices respected and supported by government. They may – or may not – be a statistically significant group. They may be out of the labour force for a few years until their children head off to school or a few decades until their children head off to college. But, they are out there, and they want their choices respected.

The 'choice' card is a tough one for feminists and women's rights advocates. After all, isn't that what we have been fighting for all these years? Women should be able to avail themselves of the full gamut of social, economic and legal choices – from abortion to employment. So, if women choose to stay home to care for children, this is a choice that should be respected.

However, that is not the way the debate is playing out. In the U.S. some feminists have actually come out against the idea of choice. Linda Hirschman, in a controversial article in the *American Prospect*, argues that women's equality requires their full and equal participation in the labour force.[3] The article has provoked a broader and at times divisive debate between women about choice in general, and the choice to opt

out in particular. But feminists and women's rights advocates should welcome the opportunities that this conversation opens. There are many important, and deeply gendered questions that need to be asked about this choice to opt out.

First, we need to put on the table the fact that it is women who are opting out, not men. Sure, we all know a few dads who have stayed home to care for their children when they are young. But, statistically, this group is virtually insignificant. The opt-out revolution is about women making choices in a world where the labour market is not structured to accommodate family obligations. It is about upper middle class making choices where there is a male breadwinner to support that choice. And it is about women making choices that are not equally open to men. Being a stay-at-home mom is a socially and culturally legitimate role for women in a way that is simply not true for stay-at-home dads.

Secondly, we need to explore some of the costs of opting out. Women who choose to stay home are taking a lot of risks with their financial security. They are assuming that the male breadwinner will continue to be around to support them. And they are assuming that when they decide to opt back in, the labour market will welcome them. These may – or may not – play out. While off-ramps are clearly marked, women who want to opt back in will have to construct their own on-ramps. Women's re-marketability will depend on a range of factors – from the amount of time they spend out of the labour market to labour market cycles.

The cost to individual women is not simply an individualized problem. We need to make sure that social policies recognize these choices and their continuing costs. If women choose to stay home to care for children on the assumption of long term support from their husbands, we need to make sure that family law continues to take the economic consequences of these choices into account if the marriage goes wrong. Property, spousal support and child support laws have evolved over the years to recognize women's unpaid labour in the family. But, some recent developments, particularly in the law of domestic contracts, have put increasing emphasis on private choice as a reason to limit economic support. Taking the opt-out choice seriously means making sure that this recent trend does not reverse the gains otherwise made in family law.

We also need to consider some of the broader cultural implications of the so-called opt-out revolution. To what extent are we witnessing the emergence of a new cultural norm of mothering, against which all mothers will be judged, and will judge themselves? Is the stay-at-home mom the new norm, the new sign of status and success, elusive for most middle class Canadian families which need two incomes just to support a modest middle class standard of living (to say nothing of the working class families, poor families, and single mother families for which such an ideal is utterly impossible). What are the implications of the opt-out revolution not as a demographic reality, but as a normative aspiration?

We also need to think about how the opt-out revolution may be used for rather more regressive political purposes. Consider for example the increasing cultural attack on the legitimacy of daycare and early childhood education. A number of recent studies have garnered considerable media attention for their conclusions that children are harmed by daycare. The C.D. Howe report, for example, found that the increased use of daycare was associated with a decrease in the well-being of children.[4] The authors conclude that the use of child care is associated with increased aggression amongst children. And their language is noticeably gendered. For example, they write that their findings are consistent with other studies that have similarly found that the "amount of time through the first 4.5 years of life that a child spends away from his or her *mother* is a predictor of assertiveness, disobedience and aggression".[5] A recent book by Quebec pediatrician Jean-Francois Chicoine similarly argues that children are harmed if they are placed in daycare too young.[6] While Dr. Chicoine emphasizes the role of *parents*, his conclusions are often translated into the role of mothers.[7] Social conservatives have quickly jumped on this bandwagon in their effort to discredit daycare in favor of stay-at-home mom care.

Coontz argues that the so-called opt-out revolution is simply a comforting myth, "reliev[ing] social anxieties without solving them, in this case by feeding the illusion that women will resolve our work/family conflicts by reversing the growing commitment to lifelong employment that they exhibited in the 1970s and 1980s."[8] She may well be right. But, this does not make it any easier to address. Some women are opting out. Some are not. Some may want to opt out but can't. Some may have opted out and want back in. We don't yet know how this emerging idea and ideal about motherhood may be affecting women's choices and desires. But, we need to pay very close attention. Because, like it or not, it is emerging as a powerful new story about the choices that women are making. We need to pay attention to who is staying home, who isn't, and why. We need to be monitoring the economic consequences of these choices. We need to be exploring the multiple ways in which this ideal of motherhood is being deployed in broader social policy debates, particularly by those with more regressive social agendas.

And we need to do so in a way that does not contribute to the polarized debate and the so-called mommy wars. This polarization only contributes to the lack of dignity already afforded to those who care for children in our society – be they stay-at-home moms, nannies or daycare workers. Many of us mothers believe that raising children is the most important work that we will do in our lives. We may all make different choices – but those choices need to be respected, and at the same time, the broader social and cultural significance of those choices must be interrogated. Choice shouldn't be a trump card to end the discussion. It should be the beginning of a sustained engagement with the on-going and deeply gendered challenges of child care. ■

1 Lisa Belkin, "The Opt Out Revolution" *New York Times Magazine* October 26, 2003.

2 Stephanie Coontz, "Myth of the Opt Out Mom" *The Christian Science Monitor,* March 30, 2006.

3 Linda Hirshman, "Homeward Bound" *The American Prospect,* December 20, 2005.

4 Baker et al, "What we can learn from Quebec's Universal Childcare Program" February 2006, C.D. Howe Institute.

5 Id.

6 Jean Francois Chicoine and Natalie Collard, *The Baby and the Bathwater: How Daycare Changes the Lives of Your Children.*

7 MP Vellacott stated in the House of Commons, for example, that Chicoine's book supports the proposition that "in normal circumstances what children need in the first few years of their lives is their mother's love and meticulous care". www.parl.gc.ca/39/1/parlbus/chambus/house/debates/009_2006-04-25/han009_1415-E.htm.

8 Coontz supra note 2.

(L-R): Saba Zarghami, Urszula Wojtyra (with son Tyrus), Polly Dondy-Kaplan, and Candice Suter

WOMEN AND THE LAW STUDENT GROUP

BY POLLY DONDY-KAPLAN '06 AND CANDICE SUTER '06

Over the past two years, Women and the Law has become a much more visible and active presence in the law school community. We are often asked what sparked this revitalization. We can point to a few factors. First, few women professors were teaching first year students in 2003-2004. This meant that it was possible for students to go through their first year and be taught only by men.

Second, many women did not speak in class because they did not know if their comments were relevant to the law. Could we ask whether the reasonable person was in fact just the reasonable man in disguise? Was there space in legal analysis of sexual assault to express shock over how the male members of the Supreme Court viewed consent? Or were these questions and reactions to cases not legal enough to express out loud? Many first year women voiced concerns and frustrations in small groups after classes, but never in class.

By a series of coincidences, four of us (Polly Dondy-Kaplan, Candice Suter, Urszula Wojtyra and Saba Zarghami) found ourselves leading Women and the Law in our second year, an organization we did not know existed in our first. The goal in our first year of running Women and the Law was to make our presence known. We organized informal get togethers and more formal speaker events. We initiated a women professor and student lunch which enabled students and professors to learn that each were concerned about gender issues. We continued the annual women student and professional pub. We began amassing an email list which grew larger at each event. We used a bulletin board to put up information and statistics on differences between women and men in law school and the legal profession. We formed an ongoing working relationship with the Career Development Office and the Alumni Office. We began networking with other student groups and became informed and involved with internal school politics around hiring, curriculum and financial aid. Now, issues of gender are discussed and debated in the law school. We have made our presence known. ■

Women and the Law Co-Chairs for 2005-2006 were: Alexis Alyea, Kathryn Bird, Andi Chow, Polly Dondy-Kaplan, Carina Kwan, Sunita Chowdhury, Darshana Patel, Candice Suter, and Zimra Yetnikoff. If you have ideas for Women and the Law or would like to be on their alumni mailing list, send a note to women.law@utoronto.ca.

Reflections on Mothering

BY PROF. JENNIFER NEDELSKY

Next to falling in love with my husband, having my two children is the best thing that ever happened to me. As a woman who came of age in the sixties and became active as a feminist in 1970, it seems embarrassing, even shocking, to write such a sentence in a public, feminist essay. In my early days as a feminist, much scorn and opprobrium was heaped on marriage and the nuclear family—and with good reason. The fact that my own nuclear family is now the center of my life, is central to many of the dilemmas of motherhood that I experience in my daily life.

My dilemmas have been those of isolation, of public and private responsibility, of caretaking, and of balance in my life. Of course, these are many of the same issues that generated the early critique of the nuclear family. These issues continue to pose dilemmas because fully adequate solutions are not possible at the individual level; the necessary systemic changes have still not taken place. For me, however, the dilemmas are framed by the passion that I feel for my children—something I never heard about in the feminism of my young adulthood.

I am glad finally to bring my scholarly attention to the issues so central to my life. I offer the following personal reflections on these dilemmas as they have come to me: by thinking back over my efforts to balance my needs and commitments while mothering my eight and eleven-year-old boys.

THE ASTONISHING JOY AND STRESS OF INFANCY

I was thirty-six years old when my husband Joe, who was forty, and I decided to conceive. When I brought my first child, Michael, home from the hospital, I was overwhelmed by joy and by chaos. Over and over again I wondered why no one had told me how wonderful it was to have a baby. I fell in love with Michael with a passion and intensity that took me completely by surprise. Part of the astonishing joy was being consumed by a love that had no quid pro quos, no contractual dimension, no fairness or reciprocity issues. I realized that I had been plagued by anxieties about my capacity for such feelings, at the same time that I was unsure whether they were possible for anyone. I saw myself as obsessed with self-protection, vigilantly guarding the precarious balance of equal power relations with Joe, wary and subtly hostile toward those with power over me. But now I reveled in an all-consuming attentiveness to Michael's needs, an endless fascination with the bond between us. I think there is something miraculous about the love one can feel for a baby, how it can bring out the best in you beyond what you thought was possible.

The astonishing joy of infancy ultimately brought its own dilemma. The surprise of the intensity of the pleasure and passion brought with it a kind of anger and resentment: The question of why no one had told me about this was not just rhetorical. I felt a sort of sense of collective betrayal by my feminist sisters. Why hadn't I read dozens of stories and articles about this special joy; why hadn't all my friends, colleagues, and acquaintances with children raved to me about their experiences? Sometimes people are puzzled when I tell them about this sense of not having been told; after all, the culture is full of various forms of glorifying motherhood. But, in fact, I think there is relatively little detailed depiction of the special bond of infancy.

In the beginning I told everyone within earshot how wonderful it was having a baby. I taught feminist theory the fall after Michael was born and talked about my experiences in class whenever the opportunity arose. But gradually I became anxious about the message I was sending. Was I subtly (or not so subtly) implying that no woman should miss this experience? And did that, in turn, imply that a woman without children was not a real or full woman? Was this the "pro-natalism" some feminists were concerned about? As the years passed I said less and less. I could not find a way to be forthright about my own experiences without running the risk of causing inadvertent pain. In the end, I found myself complicit in the silence that had so angered me in the beginning. And that is where it has stood for some years now. I have not been able to figure out a way to share my experiences in the way I wished other women had shared theirs with me. I now think that this non-communication is part of a broader pattern of isolation and privatization.

CARETAKING AND THE BONDS OF CONNECTION

One of the most important insights I got from having my children was the importance of routine physical caretaking for forming the basic bonds of connection. Even feminists who talk about the importance of caretaking sometimes assume that the

mundane activities such as changing diapers and taking out the garbage can be done by anyone; they are of no consequence in the formation of self or relationships. I came to understand their consequence in a visceral sort of way by not doing a lot of the mundane caretaking when Michael was an infant.

When Michael was born I did not have tenure and the terms of my job were explicit. I had to finish my book or lose my job. In July, when Michael was three months old, Joe gave him his first bottle so that I could go to my office to work in the mornings. I would come home and nurse him at noon and try to work in all the interstices of time for the rest of the day. After a while we established a pattern: I would go upstairs to work after dinner every night, leaving Joe with all the evening clean-up. He would also get Michael ready for bed and, usually, put him to sleep after I had come down to say goodnight to him. I nursed him and played with him, but for the following year I did less and less of the mundane caretaking. I worked everyday, including weekends, and every evening for eighteen months until I finished my book. (I still remember that I celebrated that day by walking over to Woolworths to buy Michael clothes for the first time.) In many ways I was satisfied with my capacity to write, teach full time, and have quite a lot of time for Michael (I remember calculating it once as about six hours a day). But I felt the loss of the connection through caretaking. The diaper changing, the feeding, the dressing turned out to have been an essential part of the intimate bond I had formed with him.

Over the years my initial insight about caretaking and connection with children broadened into a belief that physical caretaking is part of what roots us in the world and permits us to feel a connection with the material foundations of life, from the care the earth requires to respect for the labor that permits us to live as we do. The dominant culture of North America treats virtually all forms of physical caretaking with contempt. The more successful we are, the less caretaking we do – of our children, our houses, our cars, our material possessions. The definition of being successful is that our time is too important for mundane work. Until there is a shift in this basic stance, those who do the caretaking will be treated with contempt; they will be paid little and defined as unsuccessful.

ISOLATION, ENGAGEMENT, AND THE NEED FOR COMMUNITY

Middle-class affluence removes a whole network of public, community engagement that was once part of the routine of childhood. We rent videos instead of going to the movies, we buy books instead of going to the library, in Canada many families go to cottages instead of public parks in the summer. The schoolyard conversations with other parents are eliminated if babysitters pick up the kids or they go directly into day care. In general, the opportunities for unplanned, but routine, encounters with other parents become very limited.

One of the consequences is that many middle-class mothers do their mothering without a "community of judgment" in which to ground the daily decision-making of motherhood. The term community of judgment is derived from Hannah Arendt's argument that when we judge, we do so by imagining how others in our judging community would judge. We compare our initial approach with those of multiple others, and in forming our judgment we imagine persuading them. It is this relation to the judgment of others that gives judging its distinctive nature as fully subjective and yet "valid" for the judging community. As I interpret this insight, we can only engage in the process of judgment if we are routinely engaged in conversation with members of our community. The part of the process that draws on imagination can only work if it is based on the experience of actual exchange.

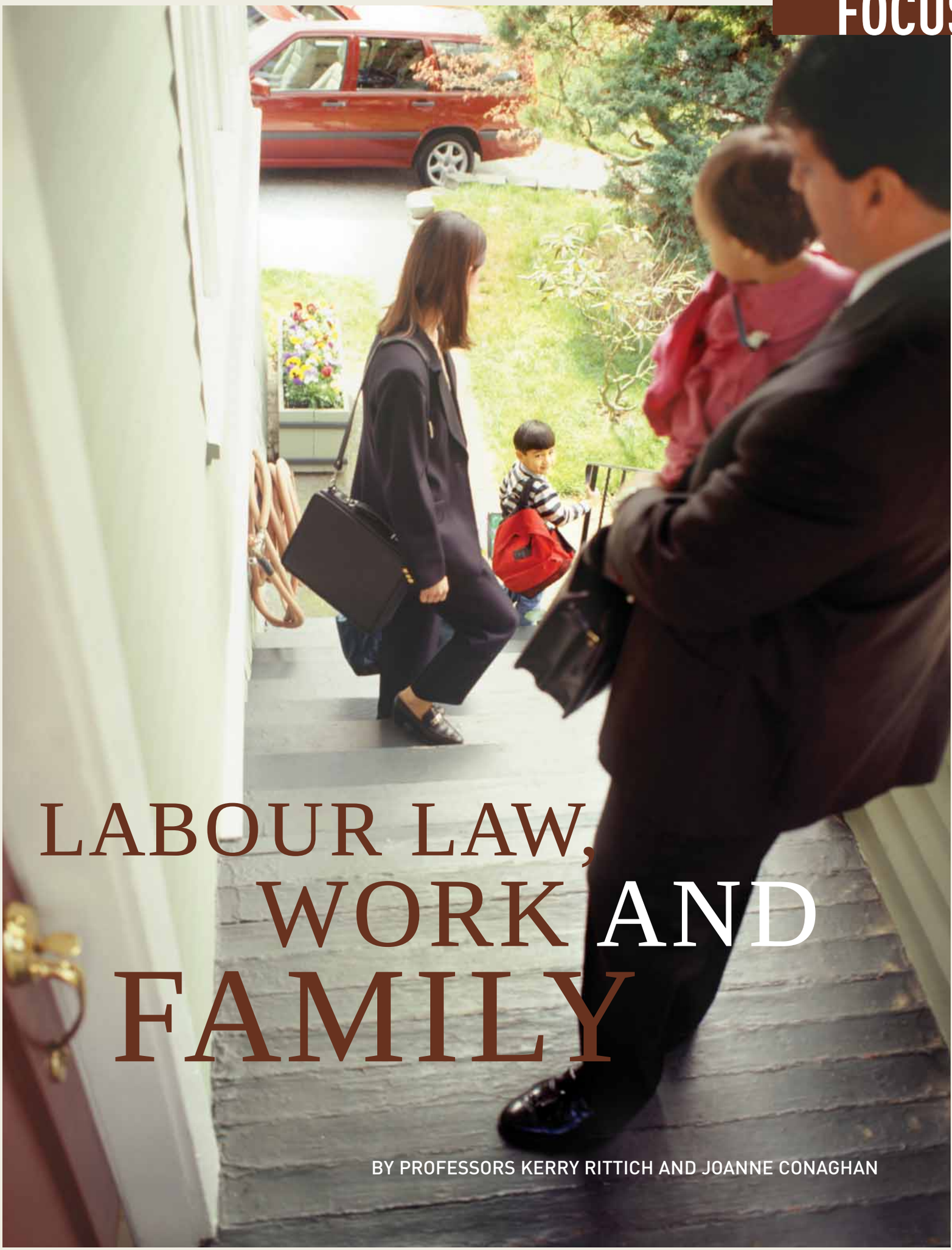
The 1970s critiques of the nuclear family often focused on the isolation of mothers within the private realm of the family. While this was surely an important problem, I think it too narrowly construed the forms of "public" life. Mothers who met regularly in the playground or for coffee must have routinely compared their experiences of childrearing. The judgments they had to make, that all mothers make all the time, about how to handle the challenges of raising their children, could be made in the context of ongoing exchange of information. The casual forums in which this exchange took place formed an important kind of public space, the basis for a judgment community of mothering.

Ironically, the important public dimension that my academic career brings me has worked to exclude me from the traditional public spaces of motherhood. As I juggle my competing demands, I cannot find the time for such regular, informal exchanges. Not surprisingly, the feminist critique did not anticipate this new form of isolation in the public world of professional life. Of course, there are now enough mothers in the professions to make it possible, in principle, to create new communities built on ongoing informal exchange. But the norms of professional life do not make it easy to be open about the constant stresses and inevitable sense of failure to meet our own expectations of ourselves.

The dilemmas of motherhood are genuine dilemmas because there are no fully adequate solutions available to them. We cannot see the possibilities for change if we do not talk openly about how we experience our dilemmas and how we feel about the imperfect solutions we have arrived at. The silence isolates us. It makes it impossible for us to know what we need to know either to make our own immediate (imperfect) choices or to figure out how to change things. Communities of judgment cannot emerge from silence. And the isolation and privatization of contemporary professional life make it harder to break the silence.

All solutions to the mutually reinforcing silence and isolation take time. And this means finding time in lives already strained by the impossibility of achieving a healthy balance given the escalating demands. The increasing pace of professional life exacerbates the existing problems and makes it harder to grasp even the short-term available solutions of better connection among women. But it is this solution, the connection of open dialogue, the constitution of new forms of community, that seems the best hope for understanding and coping with existing dilemmas and for their ultimate transformation. ■

This essay is excerpted from a much longer essay by Professor Nedelsky that was originally published in "Mother Troubles: Rethinking Contemporary Maternal Dilemmas," Julia E. Hanigsberg and Sara Ruddick, eds. Boston: Beacon Press, 1999. Professor Nedelsky's two sons are now 16 and 19.



LABOUR LAW, WORK AND FAMILY

BY PROFESSORS KERRY RITTICH AND JOANNE CONAGHAN

In recent years, gender has emerged as an increasingly important focus of attention in discourse in and around labour law across the industrialized world. A number of forces are at work. As the labour force has been 'feminized' and women have ceased to be secondary or peripheral workers, the male norm around which labour law has been structured has become both less persuasive and more problematic; at the same time, core aspects of traditional labour law regimes, from employment protections to collective bargaining practices, have been implicated in the creation of adverse distributional effects for women. As a result of economic restructuring, features of working life traditionally associated with women – low pay, flexible working practices, job insecurity – have become general labour market concerns, while the decline of the family wage and the corresponding increase in the participation of women with young children in paid work has forced the issue of reconciling work and family obligations on to legal and policy agendas. Finally, the rhetoric and reality of globalization has brought into relief the ubiquity and extent of women's economic disadvantage worldwide, compelling an examination of both its manifestations in different contexts and the role of legal rules and institutions in its production.

The application of a gender lens to the world of work has served simultaneously to highlight and problematize a number of foundational distinctions in labour law: these are the boundaries between work and family, production and reproduction, paid and unpaid work. For example, the rise in demand for flexible workers has brought into focus the dependence of current workplace norms on a particular social paradigm which assumes the performance of considerable amounts of unpaid care work. This dependence is reflected in labour law and discourse. Indeed, it turns out that virtually all of the conceptual and analytical tools which labour law deploys – concepts of work, worker, or workplace; notions of cost, benefit, and the allocation of value; models of justice and/or efficiency – presuppose a (gendered) division of labour in which 'reproductive' work is sharply distinguished from 'productive' work and is largely consigned to the realm of non-market relations. Thus, while virtually all labour market institutions are shaped by encounters at the boundaries of the productive and reproductive realms, even while these boundaries are undergoing profound change and contestation, labour law itself lacks a well-developed conceptual apparatus to identify and chart such encounters.

As the labour force has been 'feminized' and women have ceased to be secondary or peripheral workers, the male norm around which labour law has been structured has become both less persuasive and more problematic

Work/family issues were once understood to be almost entirely concerned with women. However, negotiating the work/family boundary is increasingly recognized as central to the regulatory challenges of the new economy. Changes in both labour markets and households – in most industrialized states, the labour market participation of women approaches if not equals that of men; households take a variety of different forms and are dynamic rather than stable over time – are calling into deep question both the needs and interests of workers and the capacities of households (specifically women) to provide support and labour for a broad range of essential, but 'non-market', social and economic services.

As a result, the work/family nexus informs a range of issues relating to the regulation of work in the new economy, such as what constitutes 'work' and who is a 'worker', and is intimately bound up with broader debates around the transformation of the state and strategies of privatization, deregulation, and decentralization. It is profoundly significant to debates about the viability, efficacy and desirability of different modes of labour regulation such as individual rights versus collective strategies for workers, the uses and limits of voluntary forms of regulation, the interaction of national or supra-national regulatory levels, and the merits of 'soft' versus 'hard' regulation in the context of work, as well as the merits of labour market flexibility and the regulation of working time. Finally, work/family considerations are also of crucial importance in the context of normative or distributive questions arising from the regulation of work. This is true not just (and most obviously) around sex equality concerns, but also with regard to strategies of social inclusion and debates around distributive justice between the north and the south in the context of global economic integration.

In light of these developments, there is both unprecedented opportunity for critical intervention and a pressing demand for probing and far-ranging analyses of the work/family nexus. A central premise is that the rules and institutions governing work, as well as the concepts, distinctions and assumptions underlying the legal regulation of work – think, for example, of the public/private distinction, and its effect on the division between workplace and family concerns and responsibilities – might themselves contribute to the current problems at the work/family nexus: they create and support the evolution of

workplace practices and both generate benefits and impose costs and risks, thereby creating advantages and disadvantages not only for workers and employers but among different classes of workers too. Analyses might be expressly policy-driven, that is, concerned with the extent to which analysis of work and family issues can aid the realization of independent and overlapping social, political, or economic goals such as greater labour market participation, sex equality, economic competitiveness, or social inclusion. They may be frankly normative, identifying the values and assumptions underlying current conceptions of work and family; here, they may engage with a broader set of values and ethical discourses such as social, constitutional, and human rights, or problematize the current state of the public/private divide. They may be broadly functional, situating work-family issues within the context of economic, social, and political imperatives, whether they are the interests of capital or capitalism, the tenets of neo-liberalism, the impact of globalization, or the requirements of social reproduction. They may include a historical dimension and focus on processes of social and economic change. They may be ideological, illustrating how discourses around work and family or assumptions about motherhood operate to represent as natural and universal forms and practices which are in fact the product of particular economic and social traditions and political and legal choices. Finally, legal scholarship may concern itself with the operation of the work/family dichotomy at a conceptual or doctrinal level, addressing, for example, the precise mechanics within labour law involved in the constitution of work and family as separate and conflicting spheres. But a primary purpose and effect of all such approaches is to analyze the relationship between legal forms and concepts and concrete social arrangements, and to highlight the ways in which different conceptual frameworks can themselves cause problems to alternatively materialize or disappear thereby rendering potential solutions alternatively available or invisible.

In short, the work/family nexus and the issues it engages are fundamental to the reconstitution of the sphere of work broadly understood; any failure fully to recognize this is destined to limit the value of analyses of the changes currently taking place in that sphere. Because work remains deeply gendered, any aspiration towards a progressive transformation of labour law must confront and acknowledge the extent to which the work/family divide is implicated in distributive disparities between men and women, among different social classes, and across different geographic and political regions.

A better work-life 'balance', in particular reconciling the conflicting demands of work and family while increasing women's labour market participation is now a central objective in wider debates around labour market regulation and reforms to social security.

While encouraging from one perspective, there are risks that this approach may simply reassert and entrench the existing work/life dichotomy rather than destabilize it, at the same time rendering its gendered nature invisible. This risk is especially acute where work/life balance becomes a gender-neutral preoccupation with fulfilling individual desires or facilitating lifestyle choices, while the context in which these choices are exercised – including a long-hours work culture, increasingly competitive labour markets, a new emphasis on performance-based pay, declining real wages, weakened bargaining power and greater overall economic insecurity for workers, and most importantly, labour markets opportunities that are still deeply stratified by gender and a gendered division of labour at home – remains intact. While it is possible that women may benefit from policies that are designed for the purposes of enhancing economic competitiveness and reducing fiscal strain, where women continue to perform crucial services on an unpaid basis even as they enter the market, such policy objectives may also be coercive and disadvantageous.

A BETTER WORK-LIFE 'BALANCE', IN PARTICULAR RECONCILING THE CONFLICTING DEMANDS OF WORK AND FAMILY WHILE INCREASING WOMEN'S LABOUR MARKET PARTICIPATION IS NOW A CENTRAL OBJECTIVE IN WIDER DEBATES AROUND LABOUR MARKET REGULATION

In many places, the emergence of work/family issues on the radar of policy-makers has not yet led to reforms that challenge the structural causes of gender inequality arising from the conflicting demands of the market and household. Rather, a distinct cleavage seems to be emerging between reforms that merely manage the tension between work and family so as to relieve some of the pressure on women workers on the one hand and proposals that seek more profound distributive change and have as their aim greater substantive equality for women both at home and at work on the other. Whether more promising outcomes from the standpoint of gender equality lie in the future will depend on at least two things: first, the acceptance of a much wider definition of the concept of work and second, a willingness to mount fundamental challenges to work norms and practices, both established and emerging, at home and in the labour market. ■

Professor Kerry Rittich (U of T Faculty of Law) and Professor Joanne Conaghan (University of Kent) write more fully about the issue of work and family in *Labour Law, Work and Family: Critical and Comparative Perspectives* (OUP, 2005), a collection of essays in which they and their colleagues aim to demonstrate why and how attention to the intersection of the spheres of work and family, rather than a matter primarily of interest to women and feminist scholars, is central to the regulatory, policy, and institutional challenges which states and policymakers currently face.

PERSONAL REFLECTIONS: CULTIVATING GENDER EQUALITY

BY PROF. LORRAINE WEINRIB

I think that anyone who lived my life would have developed a strong commitment to gender justice. My legal education, articling and initiation into the legal profession took place in the 1970's. This period predated recognition of the "glass ceiling" – the metaphor that crystallized the exclusion of women from the highest ranks of academic, professional and business opportunities. As I recall those bittersweet years, it was as if some doors in a long corridor were opening while others remained firmly shut. When I entered the profession, the term "lady lawyer" was commonplace and, to many in the legal profession, oxymoronic.

Initially, I found all this mystifying. I was a novice, having never experienced disadvantage or reduced status based on gender. (I should add "knowingly"; but that is another story...) Patriarchy was the distracting elephant in every corner of the law school. It later became an intermittent irritant in my professional training and, later still, my experience in practice as well.

The outsider's experience is often painful, humiliating and debilitating. Gender hierarchy is particularly frustrating because of its many facets. Over a few years, I experienced the full range of possibilities as a single woman, a married woman, a pregnant woman and, eventually, as a mother of three.

During these personal transitions, I built a career as a specialist in constitutional law in the Ministry of the Attorney General of Ontario. My work included advice, policy and litigation at the highest levels. As if my personal and professional trajectories were not sufficiently challenging, my area of expertise also shifted ground with the deliberations leading to the drafting, adoption and implementation of the Charter. This extra burden turned out to be my salvation. Charter policy and litigation integrated the personal, political and professional strands of my life.

Canadian Charter of Rights and Freedoms

My personal experience of gender difference afforded me distinct advantages from the first moment that the Charter hit my desk. I had no difficulty imagining a legal universe based on rights. Indeed, nothing seemed more natural. With the perspective of an outsider to the existing system, I welcomed the opportunity to learn about and develop the reasoning modes entailed in purposive interpretation and proportionality analysis, with reference to theory, comparative material, as well as social science data and expertise.

When I started my specialization in constitutional law, I became fascinated by the sole endorsement of gender equality in the corpus. In his reasons for judgment in the famous Persons Case, in 1930, Viscount Sankey set out the root of the gender problem as well as its solution:

> "Customs are apt to develop into traditions which are stronger than law and remain unchallenged long after the reason for them has disappeared."

Sankey's narrow concern was the meaning of the word "persons" in the Constitution Act, 1867: could the Canadian government appoint women to the Senate? Instead of parsing the word through the lens of history and privilege, Sankey staged a constitutional revolution. In a few imaginative steps, he demonstrated how to read Canada's constituent statute as a modern constitutional instrument.

His first move was to dismiss the traditional modes of legal analysis, such as the binding authority of original intent and tradition. He then took direction from the Interpretation Act, a precursor to guarantees of gender equality, which presumed gender neutrality in statutory interpretation. He also distinguished legal precedents that too readily excluded women from engagement in public affairs.

Having cleared the legal underbrush in this way, he deftly shifted the onus. The word "persons", after all, was gender neutral. What cogent arguments had the government produced to undermine women's qualifications for this office?

In a few historic paragraphs, Sankey's elevation of reason over custom anticipated the substantive and institutional structure of the Canadian Charter and, by extension, modern rights-protecting instruments generally.

Sankey illuminated the possibility of liberating constitutional analysis from the heavy hand of precedent, conservative values and entrenched privilege. He invoked the image of a living tree to encapsulate the idea of an organic, remedial and transformative instrument capable of responding to challenges grounded in legal reasoning, supported by data and expertise that opened a window to the real world.

In later decades, courts of law have used this approach to implement the post WWII rights revolution. Great judges have adapted traditional modes of legal reasoning to new purposes. Their undertaking is to filter out, and discard, mere "custom" because it lacks the normative content necessary to have the legitimacy of binding law. Some perform this function at the directive of old and new constitutional texts; others map it out it in the absence of concrete textual direction.

It was no coincidence that Sankey offered this new paradigm in a case about the entry of women into public life. Gender equality was one of the great challenges of his day as was the future constitutional development of the British colonies then coming to full legal independence. The paradigm he developed has great flexibility. It applies to a wide range of social inequality, including racial and religious discrimination.

By the time I was appointed to the law school in 1988, the Charter's substantive commitments, its distinctive mode of reasoning, and its particular structure of litigation were second nature to me. I had experienced first hand the amazing contribution that women's groups, among others, had made to these features of the Charter. I looked forward to the opportunity to illuminate the Charter's theoretical coherence generally, its application to particular issues and its institutional roles.

Accordingly, it was not surprising that my initial academic writing related to gender issues, such as the status of women in the legal profession and reproduction. My work on abortion led to an invitation to the Senate to argue against the constitutionality of the Mulroney government's proposed amendments to re-criminalize abortion after the Supreme Court's invalidation of the therapeutic exemption in Morgentaler.

Imagine my thrill in laying out the constitutional implications of this proposal to female senators, all of whom easily understood the restrictions that the proposal would impose upon the opportunities for women to live fulfilled lives, in both the private and public spheres. I imagined Sankey taking pride in this event as well as the later tie vote in the Senate that in effect repudiated the proposal.

My work on reproduction led me to read widely about sexuality so that I felt confident in entering the public debate on same sex equality. This reading also gave me the grounding to write about and lecture on the recent proposal to use Sharia law in family dispute arbitration. The Charter's reconstruction of the traditional family has caused enormous controversy, prompting invitations to make submissions to parliamentary committees, give interviews and write in the popular press.

My experience in the political advent of the Charter gave me a strong stake in its stable development. I therefore became involved in the initiatives forged to resist constitutional amendment that I believed would undermine the strong advances for women nailed down in 1982. Accordingly, I joined forces with a number of other academics and public interest groups in illuminating the problems that might develop in respect to gender equality under the Meech Lake proposals as well as the Charlottetown Accord.

The richness and complexity of gender equality issues continue to challenge and fascinate me. I consider myself fortunate to have had the opportunity to develop constitutional expertise in this area and to contribute to public deliberation as well. This expertise has also enabled me to take part in the constitutional development of other countries, which I have enjoyed immensely. ■

IMPROVING THE LAW OF SPOUSAL SUPPORT:

THE SPOUSAL SUPPORT ADVISORY GUIDELINES PROJECT

BY PROF. CAROL ROGERSON

OVER THE COURSE OF THE PAST SEVERAL YEARS I have been working, together with Professor Rollie Thompson from Dalhousie Law School, on an innovative project that has the potential to significantly improve the way in which the Canadian legal system deals with spousal support in divorce cases. The project, funded by Justice Canada, involves the development of informal, advisory guidelines intended to bring more predictability and consistency to this controversial area of law which has come to be characterized by highly discretionary and subjective decision-making. Our Draft Proposal for Spousal Support Advisory Guidelines (the "Draft Proposal") was released by the Department of Justice in January of 2005 and is available online at www.justice.gc.ca/en/dept/pub/spousal/project/toc.html. We are now in the process of gathering feedback on the proposal, with a view to issuing a revised proposal in September of 2007.

When people, other than family lawyers, learn that I am working on the law of spousal support, the typical response is one of puzzlement. While most people are familiar with the child support obligation and intuitively accept its fairness, many do not even know what spousal support is until I refer to its earlier legal incarnation—alimony. And knowing that, they wonder why I would spend my time working on an issue that has obviously become obsolete in an era of no-fault divorce, new norms of gender equality accompanied by high rates of female labour force participation, and laws requiring the equal sharing of matrimonial property upon divorce.

But spousal support is not a legal or social anachronism; it is a significant legal obligation and an area of law that remains of crucial significance to many women going through the process of divorce. The Canadian law of spousal support has undergone a dramatic evolution over the course of the past twenty years. Starting from a point in the 1980s where the "clean break" model of spousal support dominated, our law has come to recognize, through a series of important Supreme Court of Canada decisions interpreting the spousal support provisions of the 1985 *Divorce Act*, an expansive basis for spousal support that may surprise many readers.

But all is not well in the law of spousal support. The guiding principles of "compensation" and "need" endorsed by the Supreme Court of Canada are vague and abstract and open to widely differing interpretations by judges and lawyers.

In its ground-breaking *Moge* decision in 1992, the Supreme Court of Canada articulated a generous *compensatory* basis for spousal support, recognizing the important role of spousal support in fairly compensating spouses for the economic impact of the marriage and marital roles, most typically the sacrifice of labour force participation to care for children, both during the marriage and after marriage breakdown. Then in its 1999 decision in *Bracklow*, the Supreme Court of Canada further expanded the basis for spousal support by recognizing a significant non-compensatory role for spousal support based on *need* alone—need unconnected to marital roles. *Bracklow* thus endorsed a broader role for spousal support beyond compensation for the economic gains and losses arising from the marriage, to one that entails responding to the economic dislocation and hardship that results when relationships of economic dependency involving closely intertwined lives break down.

Despite the gender neutral language of the spousal support provisions of the *Divorce Act* and the fact that spousal support can be claimed by men left in economic need at the end of a marriage as well as women, women remain the primary recipients of spousal support. This is no surprise. While progress has been made, gender equality in the family and the workplace remains an elusive goal for many women. Under current structures of family and work, significant numbers of women in opposite-sex relationships still tend to assume a disproportionate share of responsibility for child-rearing, to the detriment of their labour force participation and income-earning capacity. They are thus left in a weaker economic position at the point of marriage breakdown than their husbands. Spousal support is the legal remedy that is available to remedy this economic vulnerability.

But all is not well in the law of spousal support. The guiding principles of "compensation" and "need" endorsed by the Supreme Court of Canada are vague and abstract and open to widely differing interpretations by judges and lawyers. This is a problem reinforced by the Supreme Court of Canada's insistence that spousal support decisions are inherently factual and discretionary, not based on any overarching rules or principles. Lawyers and judges have expressed growing concerns that the highly discretionary nature of the current law of spousal support has created an unacceptable degree of uncertainty and unpredictability.

Similar fact situations can generate a wide variation in results. Individual judges are provided with little concrete guidance in determining spousal support outcomes, and their subjective perceptions of fair outcomes often play a large role in determining the spousal support ultimately ordered. Lawyers in turn have difficulty predicting outcomes, thus impeding their ability to advise clients and engage in cost-effective settlement negotiations. And for those without legal representation or in weak bargaining positions—a not uncommon situation for many divorcing women—support claims are often simply not pursued. Despite a very broad basis for entitlement under the current law, many women do not claim spousal support, being unwilling to engage in the difficult and costly process required.

The spousal support advisory guidelines project is a response to these concerns. At the heart of the Draft Proposal are two formulas intended to provide a more consistent and predictable basis for determining the amount and duration of spousal support. Under these formulas, which are based on the concept of "income-sharing", spousal support is calculated as a specified percentage of spousal incomes, with the applicable percentages varying according to a number of factors including the length of the marriage and the presence or absence of dependent children. The formulas also provide guidelines for the length of time spousal support is to be paid, based upon the length of the marriage and the ages of both the spouses and the children.

Unlike the federal *Child Support Guidelines* introduced in 1997, these guidelines are not an exercise in formal law reform. They are, instead, informal, advisory guidelines intended to operate within the current legislation and to generate results in broad conformity with dominant outcomes and emerging trends in current practice. While current practice certainly does not yield uniform results across

the country, patterns can be found in a range of typical fact situations and it is these patterns which have been incorporated into the advisory guidelines. We have called the process by which these guidelines were developed one of working "from the ground up"—working from current practice and drawing on the knowledge of those who work in this area on a daily basis. In order to assist us in developing the advisory guidelines, the federal Department of Justice created a thirteen person Advisory Working Group on Family Law composed of lawyers, judges, and mediators from across the country.

How have lawyers and judges responded to the draft spousal support advisory guidelines which are, admittedly, novel in form being both advisory and not legally binding? Since the release of the Draft Proposal, Professor Thompson and I have been traveling across the country speaking to groups of lawyers and judges, and the response has generally been very positive. Awareness of the advisory guidelines is increasing over time, not only within the professional community of family law judges, lawyers, and mediators, but also within the larger population of divorcing spouses trying to navigate their way through the family law system. Over 50,000 copies of the Draft Proposal have been downloaded from the Justice web site since its release. There are now over 130 judicial decisions from across the country in which the advisory guidelines have been considered, including strong endorsements from appellate courts in British Columbia and New Brunswick. Even more significantly, the advisory guidelines are being widely used by lawyers in spousal support negotiations with other lawyers and in settlement conferences before judges.

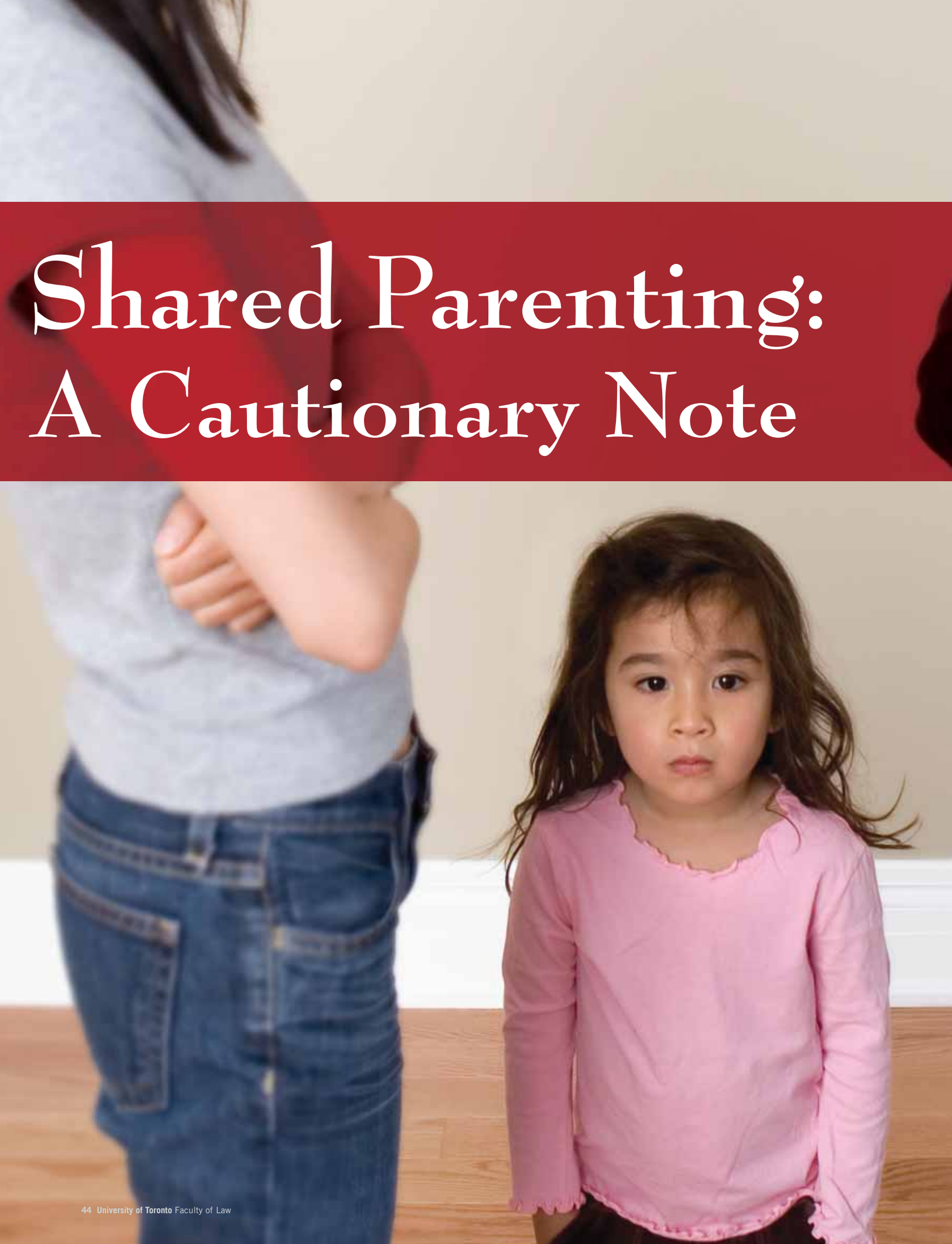
There have certainly been criticisms of the guidelines—some based on fundamental opposition to the concept of spousal support guidelines or to the concept of informal, non-legislated guidelines; some based on misunderstandings of the proposed scheme; and some supportive of the concept of advisory guidelines but pointing to aspects of the scheme that still require revision and fine-tuning. However, the Draft Proposal has already achieved one of its goals, which is the rekindling of a serious debate about the law of spousal support.

With growing awareness of the advisory guidelines we are now well-positioned to move into the next phase of the project, one of more structured feedback based on an "Issues Paper" which we are in the process of preparing, with a review to producing a revised set of advisory guidelines in the early fall of 2007.

Returning to the theme of this issue of *Nexus*, the question arises of what impact this somewhat novel scheme of advisory spousal support guidelines will have on women. Clearly not every woman claiming spousal support will be better off under the advisory guidelines than under the current highly discretionary system for determining spousal support. Based as they are on dominant outcomes and emerging patterns in current practice, the advisory guidelines are not intended to increase levels of spousal support across the broad run of cases. Rather, they are intended to provide greater consistency – which will inevitably mean that some spouses will see higher support awards and others will see lower awards.

THE DRAFT PROPOSAL HAS ALREADY ACHIEVED ONE OF ITS GOALS, WHICH IS THE REKINDLING OF A SERIOUS DEBATE ABOUT THE LAW OF SPOUSAL SUPPORT.

Rather than a dramatic increase in spousal support awards, the main impact of the advisory guidelines, should they become widely adopted and applied, will likely be more frequent spousal support awards, as they offer default ranges and reduce the cost of ascertaining support amounts. Many women who now abandon legitimate spousal support claims under the current costly and unpredictable discretionary regime will obtain the support to which they are entitled. The advisory guidelines offer, to my mind, the possibility of actually implementing the generous principles of spousal support endorsed by the Supreme Court of Canada in *Moge* and *Bracklow* and, given that this is a project that is national in scope, in a way which will accrue to the benefit of women across the country. ■



Shared Parenting: A Cautionary Note

BY PROF. MARTHA SHAFFER

FOR THE PAST 15 YEARS OR SO, a wave of custody law reform has been sweeping across many western nations. These reforms tend to be characterized by three main themes: 1) they abolish the language of "custody" and "access"; 2) they move in the direction of "shared parenting" by emphasizing the continuation of parental responsibilities after marriage breakdown; and 3) they encourage reliance on alternative dispute resolution processes. These reforms have been premised, in part, on the belief that they would reduce conflict and encourage cooperative post-separation parenting. Proponents of the reforms contend that "custody" and "access" are outmoded terms with proprietary or criminal law connotations, and that awards giving one parent "custody" and the other "access" promote an adversarial, "winner takes all" mentality. According to reform advocates, abolishing these concepts in favour of a notion of "parental responsibilities" would send an important signal that both parents remain "full" parents after separation, which in turn would allow both parents to remain actively involved in their children's lives and to create arrangements tailored to their children's needs. These reforms were also, however, supported – and in some cases instigated - by fathers' rights organizations, which argued that custody law was biased against men. In their view, this bias could be redressed by safeguarding the father/child relationship by legislatively enshrining a presumption in favour of "joint custody" or, to use the new terminology, "shared parenting".

Canada has not been immune from this reform agenda. After fathers' rights groups complained of bias in the family law system during hearings on the federal child support guidelines in 1996 and 1997, the federal government embarked on a process of custody law reform. After a lengthy reform process, the Liberal government, led by Prime Minister Chretien, introduced Bill C-22 in 2002. Consistent with the general law reform trend, Bill C-22 would have amended the custody provisions of the *Divorce Act* by replacing the language of "custody" and "access" with the notion of parental responsibility. Under the proposed regime, courts would no longer have made orders for custody or access, but would instead have made "parenting orders" allocating "parenting time" and decision-making authority between the parents. However, Bill C-22 died on the order paper when Parliament adjourned in 2003. Despite some talk of re-introducing the Bill, for better or worse Bill C-22 has been left to languish in obscurity.

Significantly, Bill C-22 did not contain a presumption of shared parenting, causing it to be a source of disappointment for some fathers' rights groups. The Bill's failure to enshrine shared parenting was also the focus of attack by members of the Canadian Alliance and the Progressive Conservatives who voiced strong opposition to the Bill.

FAST forward to 2006. The custody and access provisions of the *Divorce Act* have still not been amended. Now, though, there is a Conservative government in power. Some of the MPs who opposed Bill C-22 for failing to endorse shared parenting now sit as Conservative MPs. In addition, the Conservative Party as a whole indicated its commitment to "make all the necessary changes to the *Divorce Act"* to being about shared parenting in its first Declaration of Policy following the merger between the Canadian Alliance and the Progressive Conservatives.

At the moment, custody law reform is not one of the Harper government's top five priorities. In fact, given the tenuous minority the Conservatives have in the House of Commons and the fact that custody reform is also highly contentious, Harper may decide to steer clear of custody reform all together. If, however, Harper decides to tackle the issue of child custody, it seems clear that he will move in the direction of shared parenting.

BEFORE CANADA JUMPS ONTO THE SHARED PARENTING BANDWAGON, IT WOULD BE WISE TO LOOK MORE CLOSELY AT THE PSYCHOLOGICAL LITERATURE ON SHARED PARENTING AND AT THE EXPERIENCES OF OTHER JURISDICTIONS THAT HAVE ALREADY AMENDED THEIR CUSTODY LAWS.

It is not entirely clear what the Conservatives mean by shared parenting, as shared parenting can mean many things, from a rhetorical commitment that both parents should continue to have a meaningful role in their children's lives post-separation, to a legal presumption that children should spend equal time with each parent following marriage breakdown. However, many of the statements made during the debates surrounding Bill C-22 suggest that the Conservatives favour a strong version of shared parenting, which would require courts to order parents to share physical custody of their children on a 50/50 basis unless there was a compelling reason not to do so. Conservative Party House Leader, Jay Hill, a long-time proponent of shared parenting, stated in an interview earlier this year that "it should be the right of a child to equal access to both parents" and suggested that he and other MPs would push to get shared parenting onto the national agenda.

AT first glance, shared parenting seems like a great idea. After all, it seems fair and just that both parents should continue to have a meaningful relationship with their children after marriage breakdown, since divorce, while severing the relationship between the spouses, does not terminate the relationship between parent and child. Moreover, the psychological research on children's adjustment to marriage breakdown indicates that children who continue to have regular contact with both parents tend to fare better than children who do not. What could be wrong with a legal regime that entitles both parents to continue to parent their children after divorce and that allows children to benefit from the continued involvement of both parents in their lives?

However, before Canada jumps onto the shared parenting bandwagon, it would be wise to look more closely at the psychological literature on shared parenting and at the experiences of other jurisdictions that have already amended their custody laws. Assessing the psychological literature on post-divorce parenting is not an easy task because of the use in different studies of various samples and methodologies. Nonetheless, the literature does identify certain factors that tend to improve children's post-divorce adjustment and other factors that tend to lead to poor post-divorce outcomes. Studies consistently show that children are more negatively affected by divorce where they are exposed to on-going parental conflict, where the divorce leads to economic hardship and lack of adequate income, and where the functioning of the children's primary parent is adversely affected.

WHILE most studies show that children benefit from regular contact with both parents after marriage breakdown, they do not establish that children benefit from a particular pattern or frequency of contact. In particular, they do not establish that children in "joint custody" or shared parenting arrangements fare any better than children who live primarily with one parent but who have regular contact with the other. Finally, the studies that have been conducted on families engaged in 50/50 shared parenting – though few in number – suggest that parents who manage successful shared parenting arrangements look very different from the vast majority of family law litigants. Of particular note, these families tend to be very low conflict, they tend to be higher income (perhaps related to the need to provide two households equipped to accommodate children), the mothers tend to be in the paid labour force, and the fathers tend to have flexible employment arrangements or to have reduced their employment hours to allow them to take on increased child related responsibilities.

What this research suggests is that 50/50 shared parenting may not be workable for many families and that the benefits for children of continued parental involvement can be achieved through many other post-divorce parenting arrangements. It also suggests that no single parenting arrangement works best for all children and their families.

The experiences of jurisdictions that have amended their custody laws to encourage shared parental responsibility also suggest caution before embracing a shared parenting agenda. In both Australia and Washington State, researchers found that contrary to reformers' predictions, abolishing the language of "custody" and "access" had not reduced conflict but had in certain ways increased it. In both jurisdictions, the move towards shared parental responsibility – that is shared decision making power over the child – was cited as a reason for this increase. In addition, the researchers in both jurisdictions found that the people who were most at risk of experiencing increased conflict were women fleeing abusive relationships and their children. The researchers concluded that the concept of shared parental responsibility was effectively giving abusive men legal opportunities for harassment and control and was resulting in agreements and court orders that were putting children at risk.

The impact of custody law reform in these jurisdictions tells a cautionary tale about the ability of linguistic change to reduce conflict and about the prospects for shared parenting legislation to promote children's best interests. If laws promoting shared parental decision-making increase conflict, it is reasonable to expect that laws mandating 50/50 shared parenting will have a similar, if not more pronounced effect. Coupled with the finding that parental conflict jeopardizes children's post-divorce adjustment, the Australia and Washington State experience should raise serious doubt as to whether shared parenting is a reform we in Canada should embrace. ■

BY PROF. AUDREY MACKLIN

The use of religious principles in arbitrations of family law matters illustrates the fundamental role of family law in delineating who is inside and who is outside the community according to the community's own norms. Being able to police these boundaries is a basic aspect of cultural self-determination for all communities. This issue presents the basic problem of balancing the rights of minority groups against the rights of individuals as they may be exercised within a minority. In this sense it speaks to the basic tension inherent in multiculturalism.

Marion Boyd, Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion, December 2004

The controversy over the establishment of Islamic family law arbitration in Ontario, (the so-called 'Shari'a courts') has receded into yesterday's news. The government of Ontario resolved the issue in the autumn of 2005 by introducing legislation confining judicial recognition of family law arbitral awards to those decided according to the law of Ontario or another Canadian jurisdiction, and bringing family arbitrations within the purview of the *Family Law Act*. Rather than rehearse the debate as it played out in the public discourse, I wish to refract it through another lens that casts the gender dimension in a somewhat different light. My central claim is that faith-based arbitration and its normative driver, multiculturalism, were already nested within a regime of privatised justice that largely insulated financial, custodial and property division from public scrutiny and judicial re-apportionment. I argue that the potential harms arising from the application of Muslim law are not unique to Muslim law or to arbitration, but instead illustrate how a regime of private justice can exacerbate women's vulnerability. Addressing and mitigating the hazards posed to gender equality requires attention to the interface between public justice and a fuller range of private justice options, and not only faith-based arbitration.

Almost from the outset, the debate over Islamic arbitration crystallized into what could – with mild exaggeration – be characterized as opposing answers to the late Susan Moller Okin's provocative question "Is Multiculturalism Bad for Women?" The casual observer could be forgiven for thinking that the Islamic arbitration initiative represented a novel and unique attempt to erect a separate family justice system for Muslims in Canada. This was simply untrue. Family law in Ontario (as in many other provinces) creates a default regime for support, custody and the division of family assets upon relationship breakdown. However, parties can effectively avoid litigation and opt out of the default provisions by utilizing various forms of alternative dispute resolution (arbitration, mediation, negotiation). In other words, parties can choose their forum and their rules. The parties might choose to be governed by the default regime in Ontario, the laws of another province or country, religious law, or the law of the market, whose central norm dictates that whoever has more bargaining power, wins.

The decision by the Ontario government to withhold enforceability to faith-based arbitration does not mean that faith-based arbitration is illegal or that it will not happen. Moreover, the amended law still permits enforcement of domestic contracts that are the product of faith-based mediation or negotiation conducted on the advice of religious authorities. The most likely immediate impact of the government's resolution of the issue is that faith-based arbitration will either go 'underground' or be re-channelled into mediation or negotiation.

With respect to the latter consequence, it is important to acknowledge that as a practical matter, the outcomes of mediated or negotiated settlements are largely insulated from judicial scrutiny (except regarding child support) unless and until a dissatisfied party challenges the settlement in court. Even then, the grounds for judicial intervention are narrow, as revealed by the British Columbia case of *Hartshorne v. Hartshorne*[2].

A majority of the Supreme Court of Canada, reversing two lower court judgments, upheld a pre-nuptial agreement presented by the husband on the eve of the wedding and signed by his future wife on their wedding day. The animating principle of the pre-nuptial agreement was the wholly secular norm of formal equality: the property allocation upon divorce should "leave with each party that which he or she had before the marriage." (para. 65). As is often the case, this principle operated to the detriment of the woman[3]. Independent legal counsel advised the woman that the agreement was grossly unfair in comparison to her default entitlements under the statutory family law regime in her province. Under the British Columbia *Family Relations Act*, Mrs. Hartshorne would have benefited from a presumption that she was entitled to a 50% share of the matrimonial home and 50% of family assets acquired after the marriage. By the time the couple separated nine years later, Mrs. Hartshorne's entitlement under the pre-nuptial agreement consisted of approximately 20% of the family assets[4].

We have heard loud and clear from those who are seeking greater protections for women. We must constantly move forward to eradicate discrimination, protect the vulnerable, and promote equality. As the Premier re-iterated this week, we will ensure that women's rights are fully protected. We are guided by the values and the rights enshrined in our Charter of Rights and Freedoms. We will ensure that the law of the land in Ontario is not compromised, that there will be no binding family arbitration in Ontario that uses a set of rules or laws that discriminate against women[1].

Ontario Attorney General
Michael Bryant,
September 2005

The Supreme Court of Canada allowed Mr. Hartshorne's appeal and rejected the argument that the prenuptial agreement was unfair, employing a test developed in an earlier case for assessing whether a domestic contract was unfair at the time of distribution. In brief, the Court signalled two indicia of unfairness: lack of genuine consent at the time of contract formation, or a significant disparity between the expectations of the parties about their future circumstances and what actually happened. On the latter point, the majority of the Supreme Court of Canada found that life unfolded roughly the way the parties expected: Mr. Hartshorne continued his law practice and Mrs. Hartshorne stayed home and raised their two children, the second of whom was born after the marriage and had special needs.

signed it." (para. 65). In the result, the Supreme Court of Canada endorses a stark, zero-sum approach to autonomy and consent: If the circumstances do not amount to "duress, coercion or undue influence" in law (which all levels of court and both majority and dissent on the Supreme Court agree they did not), then the context is irrelevant to assessing the fairness of the Agreement, and the irrebuttable presumption is that both parties acted with equal autonomy. Because the Court determined that events in their life together as husband and wife unfolded approximately as anticipated by the pre-nuptial agreement, and because Mrs. Hartshorne was still entitled to spousal and child support, the majority of the Supreme Court of Canada declined to find the agreement unfair.

"The decision by the Ontario government to withhold enforceability to faith-based arbitration does not mean that faith-based arbitration is illegal or that it will not happen."

Although the majority of the Supreme Court overruled both the trial and appellate courts of British Columbia, and despite the dissenting opinion of a minority on the Supreme Court, all judges agreed on the point that Mrs. Hartshorne was not coerced or under duress when she signed the pre-nuptial agreement on her wedding day. Here is what the dissent said about power relations between the couple:

> There are indications that the respondent was in a vulnerable position in negotiation – [though] not enough for the agreement to be unconscionable. … The respondent had already been out of the workforce and dependent on the appellant for almost two years and had only ever worked as a lawyer (and before that, an articling student) in the appellant's firm. The agreement was concluded under pressure with the wedding fast approaching. The respondent sought changes to the agreement before execution but was unable to persuade the appellant to agree, except with respect to minor changes, such as the insertion of a clause to the effect that her signature was not voluntary and was at his insistence. These circumstances illustrate the appellant's position of power within the relationship, as well as the respondent's correlative dependence. That she remained at home for the rest of the marriage relationship to take care of the couple's children further illustrates the power dynamics at play. (para. 90).

Importantly, this inequality of bargaining power described by the dissent did not vitiate Mrs. Hartshorne's consent. Indeed, the majority paints the Agreement with the patina of mutuality by describing it as reflective of the "intention of the parties," and admonishes that "if the Respondent truly believed that the Agreement was unacceptable at that time, she should not have

It is not obvious why negotiation based on the secular norm of rational exploitation of individual bargaining power should be treated as manifestly more consensual or autonomous than negotiation against a background of shared religious principles. In terms of assessing substantive outcomes, consider that in *Hartshorne*, the Supreme Court upheld a pre-nuptial agreement that led to an 80/20 apportionment of property rather than the default 50/50 split. If a Muslim couple, after employing the services of a religious mediator, enter into an agreement that sanctions an 80/20 division of family assets in favour of the husband, would or should a court (or the court of public opinion) view this any differently?

The particulars of Muslim women's vulnerabilities may diverge from those of Mrs. Hartshorne (a middle-class, secular, legally trained Canadian citizen). Indeed, my point here is not to argue that the outcome in *Hartshorne* was wrong. Nevertheless, if one assumes that the alternatives to Islamic family law arbitration will necessarily advance the goals of gender equality in the face of structural inequalities of bargaining power, decisions like *Hartshorne* should sound a cautionary note.

Ultimately, my contention is that framing the question about Islamic arbitration as "Is multiculturalism bad for women?" avoids the equally salient question "Is privatisation bad for women?" I do not believe that this latter question permits of a simple yes or no answer; rather, it invites us to identify the hazards of private justice. In terms of policy, it also encourages us to think creatively about using judicial oversight as a means of bringing institutions of public and private justice into a productive dialogue that will ultimately serve the interests of gender equality, multiculturalism, and autonomy better than the current regime. ■

[1] Statement by Attorney General on Arbitration Act, 1991. www.attorneygeneral.jus.gov.on.ca/english/news/2005/20050908-arb1991.asp, 8 September 2005, (accessed May 16, 2006).

[2] [2004] 1 SCR 550.

[3] The agreement gave Mrs. Hartshorne a 3% interest in the matrimonial home per year of marriage, up to a maximum of 49%. (Hartshorne, para. 6)

[4] The monetary value of her entitlement was approximately $280,000.

International human rights law regarding women is evolving through four overlapping phases. The phases are fluid, responding to the dynamics of women's lives and the human rights abuses they face. Each phase centers on a particular international treaty or group of treaties, which provides opportunities for debate and dialogue on particular forms of violations of women's rights. Each treaty or group of treaties has its own network of interested actors who work for, or against, treaty implementation.

During the first phase of development of human rights law relating to women, states focus on the promotion of specific legal rights of women through the negotiation of a specialized treaty, for instance concerning employment, trafficking in persons, and violence against women. New international and regional conventions emerge, such as the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

During the second phase of development, states include sex as a legally prohibited ground of discrimination. This prohibition is included in the Universal Declaration of Human Rights and the international and regional human rights treaties designed to give legal effect to the Declaration.

The third phase of development seeks to remedy the pervasive and structural nature of violations of women's rights, principally through the effective application of the Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW Convention), now ratified by 182 countries, including Canada.

INTERNATIONAL PROTECTION OF WOMEN'S RIGHTS

BY PROF. REBECCA COOK

(March 2006, Bangladeshi) Women take part in a protest demading equal rights in Dhaka, on International Women's Day.

Photo: Shafiq Alam/AFP/Getty Images

Photo: N. Behring-Chisholm

(July 2002, Afghanistan) Internally displaced Afghans in the southern border town of Spin Boldak / UNHCR

The elimnation of all forms of discrimination includes eliminating gender discrimination, meaning socially constructed discrimination, in contrast to sex discrimination, meaning exclusion on biological grounds, such as the exclusion of women from work on grounds of pregnancy. More recently, as insights are gained into the intersections of different forms of discrimination, the reference to all forms of discrimination has been interpreted to mean multiple and compounding forms of discrimination, such as on grounds of sex and race, or sex and age discrimination. The content and meaning of the CEDAW Convention evolve as the Committee on the Elimination of Discrimination against Women (the CEDAW Committee) applies the Convention to specific forms of discrimination, and develops General Recommendations to guide countries submitting their periodic reports that the Convention requires.

For example, the CEDAW Committee's General Recommendation on Temporary Special Measures, adopted in 2004, addresses the need to take affirmative steps to achieve women's equality in fact, or de facto equality, also referred to as substantive equality or equality of result. This Recommendation explains that such steps are time-limited positive measures aimed to improve the position of women, and encourages states to adopt them to accelerate the participation of women in political, economic, social, cultural, and civil life, and the redistribution of power and resources necessary for such participation.

The fourth phase of development seeks to integrate women's concerns into more generalized treaties such as on international trade, and, for example, the treaty establishing the International Criminal Court.

Characterizing all four phases of development of international women's rights in theory is a lack of state compliance in practice. The Preamble to the CEDAW Convention expressed the concern of States Parties that "despite these various instruments extensive discrimination against women continues to exist." A frequent tension that arises in the implementation of women's human rights involves the conflict between patriarchal religious and cultural practices and women's equality.

This tension is apparent in many of the reservations or exceptions entered by states' parties to the CEDAW Convention, which limit the reserving state's obligations under particular articles where they conflict with national religious or customary laws. Where reservations, such as those of religiously orthodox countries, concern articles that are central to the object and purpose of the Convention, there is doubt as to whether those states can legally be considered parties at all. Such a conflict could exist where the reservation protects the continuation of practices that are premised upon and reinforce women's inequality.

The tension between implementing women's human rights on the one hand, and preserving patriarchal religious and cultural practices on the other, is also apparent in states parties that have not entered explicit reservations on the issue. In countries such as Canada, which constitutionally guarantee freedom of religion as well as a commitment to multiculturalism, governments may be reluctant or uncertain about implementing policies to enhance women's enjoyment of their human rights where such enjoyment conflicts with the beliefs of certain religious and ethnic groups. This is apparent in Canadian debates on the application of Shari'a in arbitration concerning family matters, and in debates around whether or not polygyny (marriage of one man to several wives) should be legalized pursuant to the right to freedom of religion.

While several international human rights conventions recognize the right to freedom of religion, as well as the right not to suffer discrimination on the basis of one's religious beliefs or culture, it is generally recognized that these rights do not extend so far as to condone religious or cultural practices that violate the rights of others. In accordance with this consideration, some states, such as South Africa, provide that the constitutional guarantee of gender equality will prevail in the event of a conflict with customary norms, where customary norms contravene gender equality. Another view laments the dichotomous thinking inherent in characterizing the right to freedom of religion as continually contrary to women's rights, and seeks to develop common ground through scholarly engagement with religious and customary norms that can benefit women's equality.

Explanations abound on why states do not comply with their obligations to respect and protect the human rights of women. One is that human rights do not resonate with women,

especially those who are not empowered or accustomed to hold their states or non-state actors accountable for neglect of their rights. Some governmental officials perceive that there is little political advantage to be gained by protecting the human rights of women, and still others think political power might be lost by doing so. In contrast to the realistic school of international law is a more liberal school that argues that governments comply with international law out of a sense of moral obligation and justice, rather than simply out of self-interest.

A further explanation for states' lack of conformity with the CEDAW obligations to which they claim to subscribe is that reporting requirements do not provide sufficient incentives or rewards for compliance. States are obligated to report on a periodic basis on what they have done to bring their laws, policies and practices into compliance with the Convention. The CEDAW Committee makes note, in its Concluding Observations on each state report, of instances or patterns of non-compliance, but has the power only of persuasion to ensure compliance.

The reporting requirement has now been strengthened by the adoption in 1999 of the Optional Protocol to the Convention (the CEDAW Protocol), and its ratification by 78 states, including Canada. The CEDAW Protocol allows individuals from States Parties to the CEDAW Convention that have ratified its Protocol to bring a communication in the form of a complaint to the CEDAW Committee, in order to seek redress for alleged violations of specific rights set forth in the Convention.

The Protocol also allows the Committee to undertake inquiries when it receives reliable information indicating grave or systematic violations of a right protected in the Convention by a State Party. Unlike the complaints procedure, the inquiry procedure authorizes the Committee to examine patterns of offending conduct culminating in grave or systematic violations, rather than providing specific redress for individuals.

One of the CEDAW Protocol's greatest potentials lies in the ability it opens to apply the principles of the Convention to specific abuses affecting women, thereby developing the normative content of these principles. Moreover, the Protocol will provide women with a means of applying rights in areas that have not been sufficiently protected by other human rights conventions or by domestic law. Although the Committee cannot enforce its own recommendations under the Protocol, the fact that many states have agreed to submit their policies and practices to Committee scrutiny and have expressed an intention to follow its recommendations made under the Protocol, suggests that they continue to view the norms of the Convention as legitimate international legal obligations. Canadian courts of authority have declared that, in interpreting domestic laws, they will presume that governments intend to conform to, and not violate, international legal obligations.

The CEDAW Protocol provides incentives for governments to reform discriminatory laws and practices, and to provide more effective avenues of redress for women at the domestic level. Individuals seeking redress must exhaust all reasonably available domestic remedies before the CEDAW Committee will admit their complaints. The author of a complaint must therefore make use of all available judicial and administrative avenues offering a reasonable prospect of redress. No obligation exists, however, for a complainant to pursue remedies that are neither adequate nor effective. An important contribution of this Protocol is to encourage states to ensure that domestic remedies are available to and effective for women.

Beyond the formal procedures of enforcement of international human rights conventions relating to women are the less formal ways in which international human rights law influences or binds domestic practice with regard to women. Increasingly, judges in Canada, Australia, India, and, for example, Costa Rica, are using the CEDAW Convention as persuasive authority to concretize human rights or constitutional meanings favourable to women's equality. Most promisingly, international human rights law is increasingly used as a reference point to question the legitimacy of governments that do not take steps to eliminate discrimination against women. In other words, international human rights law is beginning to change the nature of the debate about women, and to shift the burden onto governments to justify why they are not doing more to ensure women's equality and dignity. ■

International human rights law is increasingly used as a reference point to question the legitimacy of governments that do not take steps to eliminate discrimination against women.

PROTECTING THE RIGHTS OF FORCIBLY DISPLACED WOMEN AND GIRLS

BY DIANE GOODMAN '83

Marion and Geeta are not the real names of these young women, but their testimonies are true. During the course of my work with the United Nations High Commissioner for Refugees (UNHCR) over the past ten years, I have had the privilege of working with and for many girls and women like them. Women who have suffered unimaginable loss, brutality and terror, but who nevertheless carry on, rebuilding their lives, and those of their families and communities, with creativity and courage.

War, conflict, persecution and displacement are devastating for individuals, families, communities and countries. However in every country and community where UNHCR works, conflict, violence and displacement has a disproportionately severe impact on women and girls.

During conflict women and girls are targeted because of their sex and their status in society. Sexual and gender-based violence – including rape, forced impregnation, forced abortion, trafficking, sexual slavery, and the intentional spread of sexually transmitted infections including HIV/AIDs – is one of the defining characteristics of contemporary armed conflict.

Photo: UNHCR / H. Caux

(August 2005, Sudan) An IDP teenager girl revises her lessons in her book for Arabic classes at the center for women in Ryad camp, El Geneina, West Darfur. UNHCR has established 31 centers in IDP camps and villages of origins throughout West Darfur. Many women in Darfur have been beaten up, sexually assaulted and/or raped by groups of militia. The centers offer a safe haven for them to address their traumas, get support from their peers and explore solutions to minimize the risks of attacks. IDP women and girls are able to attend literacy and mathematic classes and to receive training for a range of activities (using a fuel efficiency stove, cooking, handicraft, etc). They are also able to attend SGBV workshops.

"I was in class eight when we got married. I had my child and my husband started mistreating me. He had an affair with another girl. I was beaten several times. Sometimes I was beaten so badly I bled. I told the sector head. My husband took a second wife. He said "if you don't allow me to take a second wife, then the ration card is in my name, and I'll take everything."

Geeta, *aged 19, Bhutanese refugee woman in Nepal*[1]

Living in overcrowded camps and makeshift settlements, or hidden from view in cities and towns, displaced women and girls struggle to survive. Declining international attention and resources, lack of livelihood opportunities, and restricted access to fundamental rights have also exposed women and girls to a host of increased protection risks. Sexual and gender-based violence, including domestic violence, and harmful traditional practices such as forced and early marriage, often increase in such circumstances. Lack of, or biases in, judicial systems, or the application of traditional justice mechanisms, leave women and girls with no recourse and result in further stigmatization and discrimination. Women and girls often are forced to exchange sex for food and services in order to support themselves and their families. They are also at risk of abduction and trafficking.

Even when they are able to return home, they face additional hardships. Frequently excluded from the peace process, women and girls suffer continued violence and discrimination in reconstruction and rehabilitation activities.[2] Once home, women and girls are especially disadvantaged when it comes to accessing their land and property, attending school, or obtaining health and other essential services.

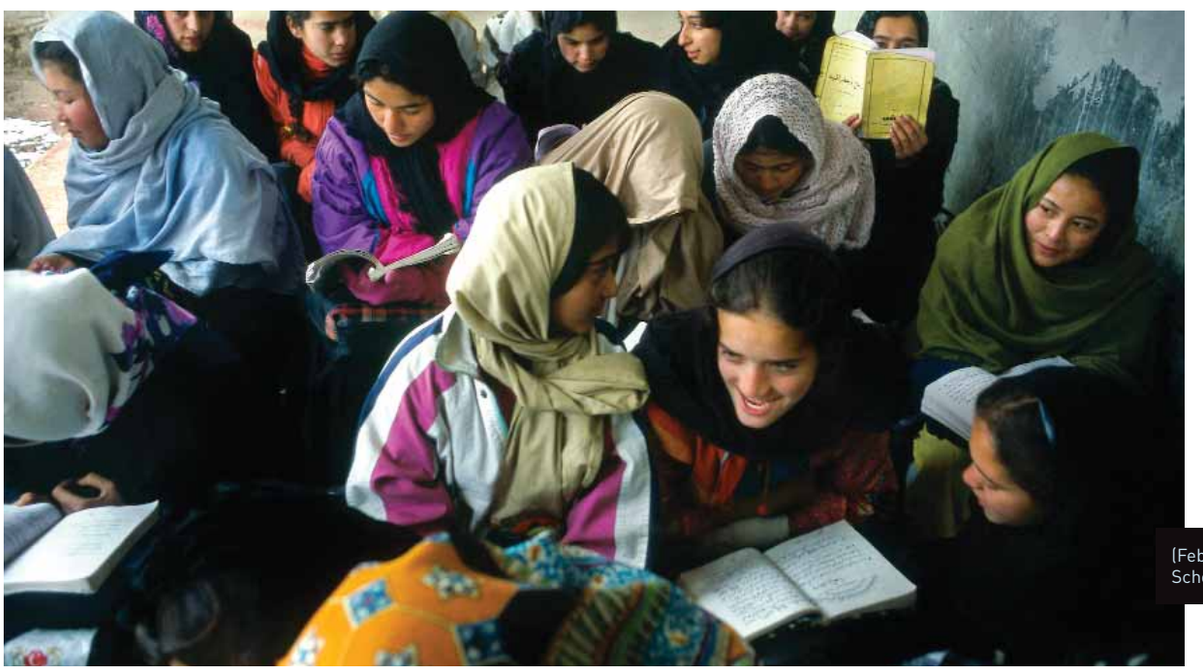
One of the most important developments in international law in recent years has been the elaboration of enhanced legal standards to promote and protect the rights of women and girls. These include the recognition that women's rights are human rights, that gender equality and the empowerment of women are essential preconditions to development, peace, and security, and that violence against women, whether in private or public life, is a grievous violation of human rights, as well as a serious impediment to the enjoyment of other rights. Rape and other forms of violence against women are now recognized as constituent acts of war crimes and crimes against humanity. While the emergence of a strong legal framework to promote and protect the rights of women and girls is a positive development, what really matters at the end of the day, however, is whether it results in a change in the every day lives of women like Marion and Geeta.

(January 2006, Colombia) Barrio "Altos de la Florida," shantytown, Bogota. IDP family living in a small hut in dire conditions.

Photo: UNHCR/ B. Heger

"My family and I were hiding in a room during an attack when a rebel broke in. My mother was asked to give one of her children up or else the entire family would be killed. My mother gave me up. The rebels took me with them, and on our way to their camp I was raped by seven of them. I was bleeding heavily and unable to walk any further. They threatened to kill me if I did not go with them. I was held by them for one year. I became pregnant and decided to escape. Upon my arrival in Freetown... I was rejected by my community and my family."

Marion, aged 17, Sierra Leonean internally displaced girl[3]



(February 2002, Afghanistan)
School in Kabul / IDPS

Photo: UNHCR / P. Benatar

For UNHCR, making a change in the lives of the displaced women and girls – and men and boys – has necessitated a dramatic change in the way we work. It has required that the organization shift from considering displaced persons as passive beneficiaries of our humanitarian assistance to equal partners in protection and solutions. Based on principles of rights, community participation and empowerment, UNHCR is working not only to empower women and girls to access and enjoy their rights, but to more actively engage men and boys in the promotion of gender equality and the elimination of violence against women.

In practical terms, it means not only helping Marion to rebuild her life, but also working with her family and community, so that she and her baby are welcomed and supported by them. It means working to change the violent behaviour of Geeta's husband, while at the same time ensuring that Geeta is safe and secure and has the power to make the choices which she wants for herself and her children. And ultimately, it means working – at the individual, community, national and international levels – to eliminate both the reasons why Marion and Geeta had to flee from their homes in the first place and the violence which they subsequently suffered. While this may seem like a utopian dream, if you had met Marion and Geeta, or any of the millions of displaced women and girls like them, you too would believe that such a dream not only could, but must, become a reality. ■

1 Human Rights Watch, Trapped by Inequality, Bhutanese Refugee Women in Nepal, September 2003, p. 33

2 Report of the Special Rapporteur on Violence against Women, Integration of the Human rights of Women and the Gender Perspective: Violence Against Women, E/CN.4/2003/75 6 January 2003.

3 Respect our Rights: Partnerships for Equality, Report on the Dialogue with Refugee Women, Geneva, 20 – 22 June 2001, p. 17

RANGANATHAN MEETS THE CHARTER:

THE LAW LIBRARIAN AS WOMEN'S INFORMATION ADVOCATE

BY BEATRICE TICE

> "[A]nd to those who would ask why the word "persons" should include females, the obvious answer is, why should it not?"
>
> **Sankey L.C.**
> *The Persons Case, Edwards v. Canada (A.G.), [1930] A.C. 124 (P.C.).*

If you're one of those "persons" who regards the Persons Case as an important legal victory in the struggle of Canadian women for equality, you're in good company. Since even before the days of the Famous Five, Canadian women activists have engaged in litigation as a means to further the ongoing effort to achieve legal equality. Despite the fact that lawsuits are prolonged, costly, and potentially risky, litigation remains a favored strategy among equality activists seeking egalitarian change. Women's advocacy groups, most notably the Women's Legal Action and Education Fund (Women's LEAF), have raised a strong and public voice for women's rights through strategic intervention in constitutional equality litigation. As feminist activist and lawyer Sheila McIntyre notes, "…the focus of my own engagement with law is not *whether,* in theory, to use 'law' in general or rights litigation in particular, as an instrument of social change, but *how* to do so accountably….."[1]

As a lawyer and former litigator myself, I am inclined to approach this notion of how to engage in equality litigation not only with an eye to accountability, but also with a much more utilitarian question in mind: *How* do you engage in equality litigation in order to *win*?

Fortunately, the law librarian in me has a ready answer: To be compelling, your arguments must be based on insightful analysis of relevant jurisprudence and other information, which are identified and located through careful and thorough investigation. In other words, dear reader, research is the fundamental first step toward successful women's rights advocacy! *Effective legal research* is the key!

While this may seem a pat conclusion, especially coming from a law librarian, "effective legal research" is often easier said than done. As everyone figures out very quickly during their first year of law school (or their first summer job!), the process of legal research can be difficult, time-consuming and, when not performed skillfully, ultimately unproductive. Non-profit women's advocacy groups, which are faced with ongoing resource challenges, may be affected by this in a number of ways. To begin with, the legal bibliography itself can be anything but user-friendly. Especially to a younger researcher, such as the law student volunteers upon which women's advocacy groups often rely, the complex organization of legal materials can be confusing and the choice among print and electronic resources bewildering. Women's advocacy groups may not be able to afford access to the gold-standard fee-based electronic resources, yet freely available legal resources are not always current, comprehensive or well-organized.

Researching equality issues also often requires investigation of materials that are not part of the standard legal bibliography, such as government reports and empirical information. These can be difficult to locate, even for professionals. Also, rights arguments arising under international commitments are increasingly being made in domestic courts. Researching these issues opens the door to the crazy world of international legal research, which truly does require special expertise that may not be readily available to women's advocacy researchers. And none of this information – legal, extra-legal or international – is comprehensively organized with a focus on the task at hand, namely advocating women's rights.

In a world where time is money and efficiency is everything, non-profit women's advocacy groups are thus potentially placed at a competitive disadvantage in the legal information-gathering marketplace.

According to basic principles of information science – yes, information science! – such a situation should not arise. After all, when reduced to its most basic form, law is simply information. Ranganathan, the Indian father of librarianship (you've never heard of Ranganathan?!), would therefore tell us that legal information is subject to his *Five Laws of Library Science:*[2] (1) Books are for use; (2) Every reader his/her book; (3) Every book, its reader; (4) Save the time of the reader; and (5) A library is a growing organism. In other words, like any other type of information, legal information must be organized, indexed and made universally available in such a way that it can be accessed efficiently by an end user in order to supply an information need. The organization and availability (or lack thereof) of information should not serve as a barrier to access.

All of which is a fancy way of saying that law librarians have their own special role to play in furthering women's advocacy. As professionals who are privileged to know both about Ranganathan's Laws AND Section 15 of the *Charter,* law librarians have the ability, through our hybrid skills and knowledge, to collect and offer ready access to comprehensive legal and extra-legal sources specifically focused on women's equality issues. We can organize these materials in such a way that makes sense to advocacy researchers, not to mention students, scholars, and others with an interest in women's rights. Our information, made freely available, can serve as a springboard for research projects and provide an organizational template for developing effective research strategies that reach beyond the scope of the information we provide. Law librarians who support the ongoing struggle for women's equality have the unique ability – and, Ranganathan might argue, perhaps even the professional duty – to serve in this way. I call it engaging in "women's information advocacy."

I'm proud to say that the Bora Laskin Law Library has been involved in women's information advocacy for over ten years, through the Women's Human Rights Resources Programme. WHRR began in 1995 as an online annotated bibliography, initiated by Faculty of Law Professor Rebecca Cook and former Chief Librarian Ann Rae. Over the next decade, funded only by the occasional outside research grant and in-kind support from the Law Library, the online project has grown to a searchable database of over 1,300 fully annotated women's rights law resources. Available at *www.law-lib.utoronto.ca/diana,* the database offers a research "triage" for women's rights law information on Canadian and international topics, where reliable resources are located, evaluated, organized and annotated, all in a freely accessible, low-graphics format.

But in addition to offering comprehensive women's rights information, we also believe that WHRR has the potential to make an even greater contribution to women's information advocacy. Our dream is for WHRR to become actively involved in the education of the next generation of lawyers who will take up the equality challenge. We've already taken some steps in that direction. After encouraging law students to research women's rights issues in their written classwork this year, next academic year WHRR will host a symposium for students to share their work and connect with others interested in women and the law. We dream of continuing this as an annual event that will include students from all Ontario law schools. We also dream of hosting a student-run online discussion group through the WHRR website, to engage students and faculty in women's rights debates.

For women's advocacy, we dream of doing more than providing organized resources that may alleviate some of the research challenges discussed above. Through active outreach, we hope to build cooperative relationships with women's advocacy groups and other organizations focused on women's equality issues. We dream of identifying ways to structure information resources that directly connect with current and future litigation and other projects. By working together, we seek to support these groups not only by providing assistance with that fundamental first step of effective legal research, but also with the entire process of furthering women's rights, perhaps in ways we haven't even dreamed of yet.

Of course, like everything else, dreams cost money, and the realization of our dreams will be dependent on the availability of outside funding. But the real point here is to demonstrate some of the many opportunities through which law librarians, by engaging in information advocacy, can make a unique and significant contribution to the ongoing struggle for women's equality.

To paraphrase Lord Sankey, to those who would ask why the phrase "women's advocate" should include law librarians, the obvious question is, why should it not?

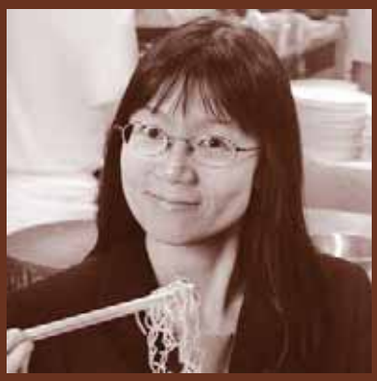
It should. Believe me, it should! ■

[1] S. McIntyre, "Feminist Movement in Law: Beyond Privileged and Privileging Theory", in R. Jhappan, ed. *Women's Legal Strategies in Canada* (2002) at 44.

[2] S.R. Ranganathan (Madras: 1931). Ranganathan (1892-1972) was an innovative librarian, philosopher, educator and mathematician. His chief technical contributions to library science were in the areas of classification and indexing theory, including the revolutionary Colon Classification System (1933). The Five Laws of Library Science, first published in 1931, has been accepted as the definitive statement of library service. Librarians today continue to recognize the Five Laws and their underlying concepts as powerful inspirations for creating libraries and services that are responsive to the needs of their users.



















PROFILES BY
JANE KIDNER ’92

PHOTOGRAPHY BY
TAFFI ROSEN

TRAIL BLAZERS

BY MARGARET WEBB

She is clearly upset. The young woman, a recent U of T Law School graduate, calls in the evening, not wanting colleagues to overhear, not wanting her name revealed. She is apprehensive that even complaining about her profession will have a detrimental effect on her career. Still, she is keen to express her dissatisfaction, which, the longer she talks, verges on outrage. "Law school isn't anything like the practice of law," she says.

Most women understand exactly what she means. And that is trying to juggle a family, a personal life, even a partner with 80-hour work weeks. Lawyers tethering themselves to clients nearly 24/7, by email, cell phone, fax. Part-time work arrangements for new mothers that push to 60 hours a week. Not to mention a work culture that exerts a not-so-subtle pressure to accept this state of affairs or forfeit the partner track. Many women choose to leave the profession altogether.

The young lawyer on the phone is quick to label the problem – "it's still a male-dominated profession" – yet she is less certain how to effect change. Well, this is a story for her.

It's been 105 years since the first female barrister in Canada – nay, the entire British Empire – graduated from U of T with an LLB, yet a mere 30 years since women started entering the profession in any significant numbers. That is to say, women are still pioneers in this field, yes, even now, as that first substantial wave of graduates from the 70s and 80s is just reaching the upper echelons of the judiciary. This past march, U of T Law School showcased its trailblazing women alumni. Starting with Clara Brett Martin – who persisted with her application to the Law Society of Upper Canada even after it deemed the word "persons" in its governing statutes could in no way be interpreted to include women – these alumni blazed a trail right up to the Supreme Court, with the Hon. Rosalie Abella being sworn in as Judge on October 2, 2004. To borrow a phrase from her inaugural speech, Abella merely persisted through law's "inhibiting power of tradition" to become the first female Jewish judge in Canada. How they did it is a study in persistence and courage, not to mention humour.

Indeed, women students were regarded "as an entertaining oddity," says Hon. Madam Justice Rosalie Abella ('70), who entered law school in 1967. "There weren't enough of us to present a threat."

THE LONELY FIFTIES

When Anna (Penina) Bacon Ker ('52) heard that U of T had launched a three-year Bachelor of Laws degree – the dawn of the modern law school – she "hightailed" it out of her Classics degree and veritably ran across University Avenue to enroll. Given that she was the only woman in classics, she hardly realized that she was the only woman through three years at law school.

She became, in her words, "just one of the guys." She recalls an exceedingly polite and respectful environment – a far cry from the jeering and cat-calling Martin endured in lectures. Then Dean Cecil ("Caesar") Wright and other law professors – likely through the unsung force of the Faculty Wives Club – created a warm social circle by inviting her to their homes for dinner. "They probably thought it was worse for me than I did."

Then came the shock of graduation. Law school was to be "the very best part" of her law career. Though Ker finished second in her class, it fell to Dean Wright to secure her a hardly glamorous position drafting wills for a trust company. When she married, she resigned. "Working and marrying – it just wasn't done then," she says. "The times were not particularly comfortable for women."

Looking back, she admits she didn't challenge the status quo as much as she would today. "I was young, 22, and not particularly aggressive. But you do what seems right at the time."

THE SLOW TO CHANGE SIXTIES

More than 10 years later, there were still only five or six women in a class of 150. Indeed, women students were regarded "as an entertaining oddity,"

Continues on page 64

Clara Brett Martin (1874 – 1923)

First woman to graduate from the U of T Law School (1899)
First woman barrister in Canada and the British Empire

The year was 1899. It would be another 20 years before women won the right to vote … almost 30 years before they were allowed to sit on Canada's Senate … and close to a century before their numbers equalled those of men in our law schools. One woman dared to challenge the establishment of the day. Her name was **Clara Brett Martin.** Barred from attending classes at the Law Society because she was not a "person," and later required to sit apart from her male colleagues and endure hissing and verbal threats, Clara eventually won her battle to practise law alongside men. She was called to the Bar of Ontario in 1897 and graduated with an LL.B. from U of T in 1899 as the first woman barrister in Canada and the British Empire. Despite the enormity of her achievement, in 1990 it was uncovered that, like others of her time, Clara held anti-Semitic views. Today we celebrate her courage and tenacity, while also acknowledging her human frailty and imperfection.

Ivy Lawrence Maynier '45 (1921 – 1999)

First woman of colour to graduate from the U of T Law School

Born in Montreal of Trinidadian parents, **Ivy Lawrence Maynier** defied the barriers of discrimination. After graduating from McGill University where she was President of the Women's Debating Union and the first woman to be awarded the McGill Debating Key, Ivy received a scholarship to attend U of T law school at a time when there were few students of colour. Her pioneering spirit stayed with her throughout her career. After her call to the bar in England in 1947 and a five year appointment with the United States Information Service in Paris, Ivy moved to Trinidad and Tobago. There she pursued her lifelong passion for adult education and developing courses, programs and lectures that would make university more accessible to dispossessed groups and communities in her country. In 1961, she married a career diplomat and moved to Jamaica where she continued her career in education at the University of the West Indies. Ivy is remembered as a leader who instilled in others the courage to pursue their dreams.

Patricia Julia Myhal '72 (1944 –1996)

First woman corporate lawyer, and first woman corporate partner, Torys LLP

Friends and colleagues of **Patricia Julia Myhal** remember her as exceptionally intelligent and articulate with rigorous standards for both herself and others. Yet beneath her sometimes intimidating professional persona they also recall a woman with great warmth and a wonderful sense of humour. A well-respected "lawyer's lawyer," Pat would draw upon her inner strength and "take charge" attitude in her own struggle to give legal voice to the "right-to-die" movement in Canada. Diagnosed with cancer at age 48, Pat spent the next five years advocating for the right to die a humane and peaceful death at the time of her own choosing. Hired as the first woman corporate lawyer at Torys, and later elevated to its first female corporate partner, she accomplished this while maintaining her passion for travel, art, music, fashion and writing. As one of her many lasting legacies at the firm, Pat developed corporate law precedents that form the basis of nearly all major corporate transactions at Torys today. She was – in a word – unforgettable.

Trailblazers Exhibit, U of T Faculty of Law, Flavelle House Lobby
(Installed on March 8, 2006)

says Hon. Madam Justice Rosalie Abella ('70), who entered law school in 1967. "There weren't enough of us to present a threat."

The law profession was even less welcoming, conducting itself as if the women's suffrage movement to win the vote 40 years before had never occurred. Janet Stubbs, now the Director of the Ontario Arts Council Foundation, was told flat out by one firm that they didn't hire women. She eventually landed an articling position with McCarthy and McCarthy. However, Abella – future litigator, academic, royal commissioner, Supreme Court Judge – faced a wall. "I don't know whether it was about being Jewish or a woman, but it was tough to get an articling job. But then, I expected it to be tough. One (firm) said, I hope you understand, we're just not hiring women."

When her father was diagnosed with cancer, Abella lost hope and stopped searching. Dean Ronald St. J. MacDonald stepped in and set up an articling interview for Abella. Once in the door, Abella soared. The profession, she says, was on the cusp of change, realizing that it had to remove barriers to women and minorities. Suddenly, Abella found herself in demand to give speeches on family law and human rights. "Both men and women were involved in those conversations and they were very open. It was almost the opposite of what it is today, with people feeling uncomfortable with the conversation."

Opportunities came along and she threw herself into them. "I just never stopped trying," she says. Her advice? "Don't be afraid to take risks on principles that are important to you."

THE TRAILBLAZING SEVENTIES

They are the *firecrackers*, the *trailblazers*, the ones *who got the whole ball rolling* – just a few of the definitions these women offered up of their generation.

They arrived at law school in the mid seventies having done their reading – *The Feminine Mystique, The Female Eunuch.* As their numbers increased steadily – from about 10 percent in '73 to about 25 percent by the end of the decade – the school felt the impact. Dean Martin Friedland appointed many of the school's first female law professors, and introduced curriculum changes (including interdisciplinary legal studies) that would nudge the study of law into a new era.

This generation brought new ideas with them – that gender did matter and that law was hardly a neutral instrument. "It was a male culture, but there was an assumption that it was neutral," says Lorraine Weinrib ('73) who went on to litigate extensively in the Supreme Court and now teaches advanced courses on the Canadian Charter at U of T. "In one criminal course, all the examples were rape cases and the professor talked jocularly about it – oops, Flossie got raped again."

But one of the first gender issues women raised was, well, on the subject of bathrooms. The law school had precisely two stalls. "It was hard for us all to use the facilities in the 20 minute breaks we had," laughs Weinrib. "Someone invariably had to go to the associate dean to ask for more toilet paper."

Yet, the increasing number of women was proving a real threat – not just to the plumbing but to the conservative old-boys nature of the profession. Weinrib says resentment simmered among both professors and male students. "One of my classmates told me outright that I shouldn't be in the class because I was taking the place of his friend who was highest on the waiting list."

Maureen Kempston Darkes ('73), GM Group Vice President and President GM Latin America, Africa and the Middle East, says the greatest challenge in the seventies was "being taken seriously. The sense was, aren't you just going to get married? But we were there for a purpose and we had every intention of having a serious career."

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Rosalie Silberman Abella ’70

Justice of the Supreme Court of Canada and the first Jewish woman appointed to the court in Canada

Before she was five, and before she even understood what being a lawyer was, **Rosie Abella** knew she wanted to be one – just as her father had been in Europe. Ignoring those who told her “girls aren’t lawyers,” Rosie, who was born in a Displaced Persons’ Camp in Germany, took comfort in the unconditional encouragement of her parents, Holocaust survivors who told her to work hard, be herself and follow her own dreams. In 1976, pregnant with her second son, Rosie became the youngest judge in Canadian history. She has achieved great distinction nationally and internationally as a noted family court judge, law professor, litigator, author and lecturer. After chairing a Royal Commission, Labour Board and Law Reform Commission, she was appointed to the Ontario Court of Appeal in 1992 and the Supreme Court of Canada in 2004. Today, this warm and charismatic powerhouse draws her greatest joy from the people closest to her – Irving, her husband of almost 40 years, and their two sons, Jacob (‘98) and Zachary, both lawyers.

Kirby Chown ’79

Ontario Regional Managing Partner, McCarthy Tétrault LLP

Whether travelling the world and learning new languages or rising to the top of a male-dominated profession, **Kirby Chown** excels when at the edge of her comfort zone. It’s a quality that has served her well in both her personal and professional life – from the rolling hills and vineyards of Italy to the corner office of one of Canada’s largest law firms. Her dual passion for travel and law tells the story of her double identity. Along the way to becoming one of Canada’s leading litigation and family law lawyers, Kirby took risks and remained open to new experiences. One of her greatest adventures – giving birth to twin boys in her first year of practice – required managing her burgeoning career without the benefit of “flex time.” Today, Kirby’s past experiences have given her more understanding of women’s special circumstances. She has put her beliefs into action, starting a women’s network that has supported maternity leave, flex work hours, career development opportunities and business development training tailored to women’s specific needs.

Maureen Kempston Darkes ’73

General Motors Group Vice-President, and President GM Latin America, Africa and Middle East

One of the few women in the automotive industry when she began her career more than 30 years ago, **Maureen Kempston Darkes** was undeterred by the challenge of rising to the top in a male-dominated profession. Inheriting her mother’s extreme optimism and determination, Maureen set her sights high. She joined General Motors’ legal staff in 1975 and held a series of progressively senior positions until her appointment in 1994 as President and General Manager, Canada, an achievement she recalls as the proudest moment of her life. Since 2002, Maureen has been Group Vice-President of General Motors Corporation and President of GM Latin America, Africa and the Middle East. She is considered one of the most influential women not only in the automotive industry, but also in international business. Over the years she has never forgotten the sacrifices made by her mother – who was left the sole provider after her husband passed away when Maureen was just 12 – and the support she has received from other women along the way.

Indeed. Jean Fraser ('75), a leading corporate finance specialist and senior partner at Osler, Hoskins & Harcourt, joined a study group that included future bright lights Rob Prichard and David Cohen, who would become deans of law at U of T and Pace University respectively. The group would stay together through three years. "We kicked around stuff beyond the black letter of the law, often in the middle of the night over our eighth pizza," says Fraser. "I think it helped me apply law, which is really what lawyering is all about. It was the first taste of what it would be like to have professional colleagues. I just loved the whole challenge."

For the first time, women graduated to open doors and opportunity. At least officially, the legal profession said they wanted more women in their firms and went recruiting. Says Fraser: "The larger law firms were falling all over themselves to hire women, and they were run in such a fashion that gave us real opportunity. In a way, we were beneficiaries of affirmative action, but the benefit didn't last very long."

Nor did the honeymoon. These "lady lawyers," as they were often called, began opening eyes from the first day on the job. Weinrib says her male colleagues actually discussed whether she should be, along with their secretaries, rotated in to relieve the receptionist at lunch. "Gender identity was stronger than my legal qualifications."

> ***"WORKING AND MARRYING – IT JUST WASN'T DONE THEN... THE TIMES WERE NOT PARTICULARLY COMFORTABLE FOR WOMEN."***
>
> *- Anna Bacon Ker '52*

Traveling with a male colleague for work on a case was also questioned, making it difficult for a woman to get work on interesting cases. Announcing pregnancies often provoked angry outbursts from mentoring lawyers, who felt they had wasted time on training. In court, Weinrib says she endured occasional taunts, being called Mr. Weinrib or, when she was obviously pregnant, Miss Weinrib. "I thought at one point that being a woman is such a burden. I'd come home and dump on my husband (U of T law Professor Ernie Weinrib) and he'd say, 'no one would ever say that to a man.' But I would somehow feel emptied and he wouldn't be able to sleep all night."

Tough as the times were, the trailblazers also reported having exceptionally supportive male mentors – crucial to moving into senior ranks. And their careers were on the fast track, so much so that many women were reluctant to step off for children, becoming the "super moms" of the eighties. Fraser says she managed by "hiring help to do everything that you could possibly farm out to someone else... It's one of the benefits of a decent income, though I wasn't sure I was making much after I paid everyone."

> *"One of my classmates told me outright that I shouldn't be in the class because I was taking the place of his friend who was highest on the waiting list."*
>
> *- Prof. Lorraine Weinrib '73*

After acquiring a substantial number of firsts – to be hired by their firm, to have children, to appear in the Supreme Court, to become partners – these women started pushing for change. Kirby Chown ('79), now a managing partner at McCarthy Tétrault, says she studied the male culture of her law firm "almost as a tourist" for the first few years. "Law was behind on issues focusing on women. But with about five years under my belt, I began to appreciate the power I had." With twins at home, she set boundaries around her personal time while she and other women advocated for flex time and more progressive policies for both maternity and paternity leaves. "I felt strongly about things and more able to speak out.... You had to be willing to be farther out there, to raise issues, and also to practice effectively and show leadership.... The ability to speak up and advocate for changes within your own work setting is a quality that should be accepted and admired as a mark of leadership."

Chown says women also brought a different approach to the practice of law, especially in her field of family law. "The male model was advocacy – we're going to trial. Now we have a whole structure in Ontario that encourages mediation and alternative dispute resolutions. Womens' style tends to be more resolution seeking through consensus building and that's had a profound effect on dispute resolution."

And then, of course, there is the sheer contribution they made as role models. Weinrib recalls arguing a case in the Supreme Court in 1982 when Bertha Wilson was appointed its first female judge. After an interruption, the court returned and made the announcement. "When they came back, I think some were not happy. But I was overwhelmed with this very, very positive feeling that I would no longer be the only woman in the courtroom."

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Jean Fraser ’75

Senior Partner, and former Managing Partner, Osler, Hoskin & Harcourt LLP

For some, being one of few women in a male-dominated profession would be an insurmountable challenge. For **Jean Fraser,** it was an opportunity not to be missed. Her characteristic optimism would serve her well over the next 30 years on her rise to the top of one of Canada’s leading business law firms. It would come in handy when, just a year into practice and expecting her first of three children, she convinced her firm to develop its first maternity leave policy. Through her experiences, Jean helped pave the way for women today, even though she is reluctant to call herself a trailblazer. In 1993, she was named Managing Partner of her firm, an honour that reflects the enormous trust and faith of colleagues. Jean is widely admired for her dynamic legal mind, her practical approach and her commitment to serving her clients at the highest level. In her spare time, she particularly enjoys time at the cottage on Lake Joseph with her husband, three children and yellow Labrador, Annabelle.

Avvy Yao-Yao Go ’89

Clinic Director, Metro Toronto Chinese and Southeast Asian Legal Clinic

Using her law degree to help Toronto’s marginalized racial communities has been a lifelong career passion for **Avvy Yao-Yao Go.** Her commitment to social justice began in law school with volunteer work at Downtown Legal Services. It was there that she first noticed the difficulties confronted by Chinese-Canadian immigrants and refugees as a result of systemic problems within the legal system. Deciding it would be more satisfying to help the disadvantaged than closing deals on Bay Street, for almost two decades Avvy has helped tens of thousands of immigrants and refugees navigate a complex system. As a first generation Chinese-Canadian immigrant herself, she feels a personal connection to her clients, even though she may not have experienced their challenges. She has also been involved in the campaign to seek redress for the Chinese Head Tax and Exclusion Act, which represented 62 years of legislated racism towards early Chinese-Canadian pioneers. Avvy vows to continue her fight for the surviving Chinese Head Tax payers and widows until justice is done.

Diane Goodman ’83

Senior Legal Adviser, United Nations High Commissioner for Refugees, Department of International Protection

Early one morning, as the sun begins to break through the trees of the forest near her home in France, **Diane Goodman** is reminded of the 1994 Rwandan genocide of nearly one million people. Protecting the rights of displaced women and children has been a lifelong calling for Diane, who in her work for the United Nations has been witness to brutal human rights violations. Her career has taken her to countries around the world, including Rwanda, Cambodia and Haiti, to reunite families separated by war, help establish refugee camps and secure the release of the wrongfully imprisoned. At times it has required putting her personal safety at risk. Yet Diane is filled with hope for a peaceful future, a shared humanity, and the promise that one day women and girls will live free of violence. Along with her husband Marc, her daughter Ella and son Myles are constant reminders of all that is beautiful in the world, and that peace and respect for human rights might yet be achieved.

THE TUMULTUOUS EIGHTIES

They arrived at law school, many without any clear idea why. Oh, there was the allure of a high-paying, secure career. But law? What would they find in law, really? For the first few weeks, they discovered culture shock as they encountered an environment that was predominantly white and deeply alienating. Yet by graduation, they had found their own personal calling to the profession.

As more visible minorities entered law school in the eighties, race began trumping gender as a leading issue. For women of colour, law school proved an "incredibly politicizing experience," says Nitya Iyer ('86), a specialist in human rights, pay equity and constitutional law with Heenan Blaikie in Vancouver. "Feminist issues were very much debated, but there was a huge silence and discomfort around race. You can't go through a year of law without realizing that whatever field of law you're looking at, different groups of people get advantaged or disadvantaged by it.... My colour mattered in a way that it hadn't before."

Avvy Yao-Yao Go ('89), a founder and director of the Metro Toronto Chinese and South East Asian Legal Clinic, didn't really know why she applied to law school, other than, she says laughing, it was "a good way to make a lot of money."

But she was dismayed, from the first day, when a professor told the incoming class that they were "the cream of the crop" and were going to be "the most powerful people in Canada." Says Go: "People around me were nodding their heads!" Instantly, she discovered an egalitarian streak and began hanging out with people who "didn't belong," students who weren't "someone's son or daughter."

Go, like Iyer, also began spending much of her time working at a downtown legal clinic in Chinatown. "Some Chinese students had no interest in the clinic because they didn't want to be ghettoized, but it was there that I found out what I wanted to do," says Go. "Courses were theoretical but here were real people with real legal problems and I thought, there is meaning in life. This is what I should be doing."

Race, complicated with gender, heated up student politics at the school. Iyer joined the fledgling Women in Law Caucus and anti-apartheid movement. The former raised hell by taking pictures of sexist graffiti in the men's washroom and plastering the pictures around the law school. For South African Ambassador Glenn Babb's visit to the University, Iyer joined an art protest that sparked a riot outside Hart House. Says Iyer: "I found law fascinating because I had never thought how class and race and sex actually organize and divide people. It was a very challenging, if not a happy time. But it changed my life."

Their struggle continues into their careers. Two recruiters at leading Toronto law firms say that firms are making little effort to increase diversity. While her clinic gives her the platform to address issues important to the Chinese community, Go says racism is a constant – not only for her clients but for her as she advocates on their behalf. "People make comments about me or my name or my appearance – especially among the tribunals. Sometimes there's a total lack of respect and even disdain. You really have to wonder."

Darlene Johnston ('86), the first aboriginal woman to attend U of T law school, was dismayed by the lack of aboriginal content in courses and sought to correct it, by becoming a professor at University of Ottawa and now U of T. She too found her political bearings outside law school, by working as lands research co-ordinator for the Chippewas of Nawash First Nation. Her advocacy led to protection of their commercial fishery, burial grounds and culturally significant sites. "There were times that involved confrontation," says Johnston, "and law school teaches the legitimacy of the status quo, to accept the status quo and be respectful. But from an aboriginal perspective, there are lots of things that appear legal but have been imposed on First Nations."

"I also had to learn to make my legal skills relevant to the community, to not assume that the law or lawyers had all the answers but to be more sensitive to what the community was trying to accomplish then see how the law could help."

When Robert Prichard became dean in 1984, he ushered in more innovative curriculum changes, shoring up feminist,

> ***"THE LARGER LAW FIRMS WERE FALLING ALL OVER THEMSELVES TO HIRE WOMEN, AND THEY WERE RUN IN SUCH A FASHION THAT GAVE US REAL OPPORTUNITY. IN A WAY, WE WERE BENEFICIARIES OF AFFIRMATIVE ACTION, BUT THE BENEFIT DIDN'T LAST VERY LONG."***
>
> *– Jean Fraser '75*

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Betty Mayfoon Ho ’77

Professor of Law, Tsinghua University Law School

One of six siblings, **Betty Mayfoon Ho** risked disappointing her parents by declining to take over the family’s book publishing business. Instead, she immigrated to Canada at age 25 with a Masters Degree in Asian Studies. Unable to find work with employers who told her she was over-educated and under-skilled, Betty entered U of T’s law school as a way to ensure financial security and freedom at a time when she was one of the few non-white students. In the decade following graduation, Betty practiced international commercial law, first in Canada and later in Hong Kong. In 1988 she decided to follow her true calling in the world of academia, first at the University of Hong Kong and later at the Tsinghua University Law School. Her goal was to help develop a comprehensive and thoughtful account of the Anglo Saxon Law as reference for the Chinese in drafting their new laws. She accomplished just that, publishing seminal books which have helped build the foundations of an indigenous legal literature in China.

Nitya Iyer ’86

Partner, Heenan Blaikie (Vancouver), Equal Pay Commissioner for the Northwest Territories

Truly an independent thinker and one of the first South Asian women to graduate from the U of T Faculty of Law, **Nitya Iyer** has forged a path true to her own values and vision, often defying the mainstream. Throughout her career she has been a forceful advocate for human rights and equality in academe, the public sector and private practice. As an advisor and consultant to governments and employers, Nitya has helped to shape human rights and pay equity policies. In 2004, she was appointed the first Equal Pay Commissioner of the Government of the Northwest Territories for a four-year term, and previously was a full-time member of the British Columbia Human Rights Tribunal. Nitya has written extensively on human rights and equality, and currently practises law in Vancouver in the areas of constitutional law, human rights and pay equity. Not one to become complacent, she continues her struggle to understand what equality means in the context of the diversity and dynamics of Canadian society.

Darlene Johnston ’86

Professor of Law, University of Toronto, Faculty of Law
First female Aboriginal law student and professor at the U of T Faculty of Law

Relaxed and serene at her ancestral home on the Bruce Peninsula’s Cape Croker Reserve, **Darlene Johnston** draws her strength from the sounds of the wind and the water, and the knowledge that generations before her have shared in the same respect for the land. A member of the Chippewas of Nawash First Nation, and the first in her family to attend university and law school, Darlene is passionately committed to the protection of her community’s fishing and land rights and preserving the cultural heritage of her ancestors. Her decision to pursue law grew gradually from a desire to help her people receive justice from the courts. After first joining Ottawa’s law school, and then U of T’s in 1989, she soon left to pursue a decade-long court battle that resulted in fishing and land rights for her band. In 2000, she returned to the law school where today she juggles her teaching and scholarship with continued work for her First Nation and international work for the Mayan people of Belize.

A DECADE LATER AND WITH NUMEROUS GAY LAWYERS AS ROLE MODELS, LAW STUDENTS ARE STILL RELUCTANT TO COME OUT PROFESSIONALLY. "THEY OFTEN ASSUME BIG FIRMS ARE HOMOPHOBIC."

- Pam Shime '95

race, international and aboriginal content. Now, Johnston says U of T works hard to recruit aboriginal students, with about 10 enrolling each year. Says Johnston, who also serves as aboriginal faculty advisor: "Things are very much improved."

THE OUT NINETIES

After storming the streets of New York City as an AIDS and gay activist, Pam Shime ('95) entered U of T law school to find a decidedly meek environment. As the only out lesbian in her year, she joined Out in Law, a gay and lesbian student organization. There were only about 10 members.

Still, she says they made an incredible impact, just by being visible. "Out students teach the whole law school because they humanize difference. In coming out, they're role models because it requires integrity, honesty and, unfortunately, still courage. But these are all important qualities for a lawyer."

Shime, who now teaches courses on sexuality and law at U of T and is the faculty advisor for Out in Law, says that even a decade later and with numerous gay lawyers as role models, law students are still reluctant to come out professionally. "They often assume big firms are homophobic."

She believes that law firms are actually more accepting than students think, but that they too often hide behind the prejudices of clients, or the assumption that clients are homophobic, racist or sexist. "They're very often wrong," says Shime. "Also, if a firm stands up and tells a client, 'this is the lawyer who can help you,' clients would rarely refuse that help."

As a National Director of Pro Bono Students Canada, she encourages law students to play a more activist role and come forward with strategies on how to make the profession more accessible – not just to gays and lesbians but for visible minorities and the disabled.

"No one's going to invite you to the table," says Shime. "You just have to step forward with ideas. But I believe there's a lot of good intention at the law school around these issues and goodwill at firms, but people often don't know how to address issues or change the way they work."

2000: AND NOW?

Women have surpassed the number of men in law school at U of T, but it still isn't easy being a female lawyer. The profession is still largely based on an outdated model of the male lawyer who devotes his life to the firm while his wife devotes herself to looking after him and their family. That model doesn't quite work for women whose biological clock starts ticking about the time they get called to the bar.

Pam Shime says the model doesn't work for many young men entering the profession either. This generation, she says, wants more time not just for family, but personal pursuits. Yet, U of T Law Professor Lorraine Weinrib believes there's a great reluctance amongst law firms to address a work/life balance that is seriously askew. If anything, work hours are getting longer. Shime agrees and they both have their theories.

When Weinrib meets students for informal career counseling, she says men never raise the issue of work/life balance and women always do. "Money, prestige and professional status is worth all the work for men. For women, it's not."

Extreme devotion to billable hours may be devotion; it may also be a way of keeping women from reaching the highest ranks. "Sexism," says Shime, "is taking on newer and more subtle forms and we need a more sophisticated approach to dealing with it."

Perhaps a sophisticated response is refusing to label work/life balance a "woman's issue." GM VP Kempston Darkes skirts gender language altogether and calls it "a critical business issue," while pointing out that her GM corporate lawyer has six children. "If I want to retain the very best, I need to create a working environment that supports their needs." Proudly, she outlines a number of initiatives she created to support flexible work schedules and help women become plant managers at GM. "It's not just a case of accepting diversity, but of valuing diversity."

Ah, getting to the top has its rewards. For these trailblazing alumni, maybe the sweetest part of the deal is securing the power to bring about change. ■

Anna Bacon Ker '52 (1930 - 2006)

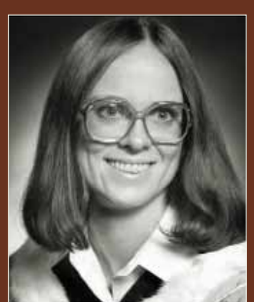
First woman to graduate from the "modern" Faculty of Law at U of T

Anna Bacon Ker was just 19 years old and on a full scholarship at U of T when she read in the Varsity student newspaper that a new law school was opening. Determined to secure a place in its first class that fall, she marched over to the now legendary Dean Caesar Wright's office to "join the Faculty of Law." When she was met with a disapproving look and his curt response "I don't think so," Anna was undeterred. She quickly retorted, "When you see my marks you'll think so." Returning to his office the next day, transcripts in hand, she was admitted on the spot. For the next three years, Anna was the only woman in the law school, and the only woman to graduate in 1952. Despite initial difficulty securing employment in the legal profession, Anna had a long and successful career working for the Federal Government Appeals Board, the Provincial Government Electoral Commission, and finally the Refugee and Immigration Bureau. She was also a mother of two and wife to David.

Naomi Overend ’85

Discipline Counsel, Law Society of Upper Canada; Former Counsel, Ontario Human Rights Commission

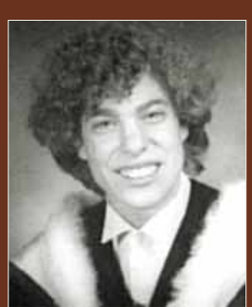
From a very early age, **Naomi Overend** has always believed in her own potential, despite an accident at age 11 which left her with a permanent disability. It’s other people, she says, who saw only stereotypes and limitations rather than the person as a whole. Even so, Naomi’s spirit was tested at times, including the early days of law school. She recalls a lonely and isolating first year, faced with inaccessible buildings and, in particular, inaccessible classrooms. Despite these challenges, Naomi completed law school, the first person in the Faculty’s history to do so in a wheelchair, and went on to a successful career with the Ontario Human Rights Commission and more recently the Law Society of Ontario. Over the past two decades she has advocated on behalf of disadvantaged persons, winning landmark cases on family and marital status, race, sexual harassment and accessibility issues. She has accomplished this while raising two children with her partner of 27 years. Despite her many accomplishments and successes, Naomi sees nothing extraordinary about what she has achieved.



Carol Rogerson ’83

Professor of Law, University of Toronto, Faculty of Law

When **Carol Rogerson** stepped in front of her first law class in 1983, her colleagues and students were mostly male, and women rarely spoke in class. Ideas of gender equality that seem commonplace today were seen as radical then. Setting out to be the best teacher she could be, Carol spent long hours preparing for class and finding ways to continually engage her students in constitutional and family law – areas that were on the cusp of revolutionary change. She has built an enduring reputation around her intellectual openness and attention to detail, as well as her influence in both the classroom and the legal profession. As a teacher she has been a strong role model, creating space for women to voice their opinions and share in the classroom experience. As a frequent advisor to all levels of government, her ideas have been influential. One of her greatest contributions in recent years was the creation of a set of advisory guidelines for spousal support that have been called “groundbreaking.”



Pam Shime ’95

National Director, Pro Bono Students Canada

A Jewish lesbian growing up in a conservative, predominantly gentile Toronto neighbourhood, **Pam Shime** learned early on what it was like to be an outsider. Drawing her strength from a very close family and parents who taught her to believe in herself, Pam refused to quietly conform. She brought her maverick spirit to U of T’s law school in 1992 – a time when few students were comfortable being openly gay. With her characteristic charm and humour, Pam set out to make the school a more welcoming place for all marginalized students. Today, as Director of Canada’s first and only national public interest law program for students, Pam is committed to improving access to justice and empowering her students to become leaders in the profession. A gifted teacher, Pam has created courses at the university on gender and law, sexuality and law, and advocacy. Her most recent innovation is an international program that will teach advocacy skills to those working for progressive change.

Janet Stubbs ’69

Director, Ontario Arts Foundation

Glamorous and statuesque, with a lilting and melodious voice, **Janet Stubbs** is still very much the mezzo-soprano who graced the operatic stage for nearly 17 years. Following her graduation and call to the bar, she spent just six months practising law before being persuaded by a teacher to audition for the Opera School at U of T’s Faculty of Music. A scholarship and place in the Canadian Opera Company chorus were just the beginning. Janet spent the next two decades travelling across Canada and the United States, sought after for coveted parts in operas, including leading roles in Carmen, Cinderella and The Barber of Seville, and solo concert performances with major Canadian orchestras. One of Canada’s top operatic talents, she recalls the thrill and glamour of the stage, wonderful camaraderie with fellow singers, as well as pre-performance jitters and closing night letdown. Today, as Director of the Ontario Arts Foundation, Janet oversees endowments that support music, theatre, dance, literature and visual arts organizations, and, fittingly, recognize outstanding Canadian artists.

Jean Teillet ’94

Partner, Pape Salter Teillet; and Aboriginal rights activist

By age four, **Jean Teillet** already loved to dance and talk – about politics, law and the Métis. Growing up in St. Boniface, Manitoba, this dynamic great-grandniece of famous Métis leader, Louis Riel, recalls large family gatherings where talk of politics filled the room. Indeed everyone in her life was in politics or public service, and she had a sense that she too would follow that path. But her passion for social justice would have to wait. First, she pursued a career in theatre and modern dance. For the next 20 years Jean worked in the theatre – dancing, acting, teaching and choreographing. Long hours of rehearsal and performance honed her concentration and commitment – skills she uses today as a litigator in court. Since entering law school at age 38, Jean has made an indelible contribution to both her community and the country, including winning a landmark victory in the Supreme Court of Canada in 2003 for Métis rights. Happily, it’s given her the same euphoria and joy she experienced dancing.

Lorraine Weinrib ’73

Professor of Law, University of Toronto, Faculty of Law and Department of Political Science

One of Canada’s foremost constitutional law experts, **Lorraine Weinrib** has spent the past 30 years – first at the Ministry of the Attorney General of Ontario, rising to Deputy Director of Constitutional Law and Policy, and since 1988 in academe – establishing the legitimacy and coherence of Canada’s Constitution, particularly the Charter. The core of modern constitutionalism, she says, is respect for equality and inherent human dignity, an idea that accounts for the Charter’s influence on other constitutional systems and the development of comparative constitutional law since the Second World War. Lorraine has published widely and taught in the United States, South Africa and Israel, exporting her vision of rights-based democracy and adapting it to specific local problems. She is excited by her teaching, noting that the classroom has much of the dynamism of the courtroom. Lorraine’s career is an enduring reminder that it is possible to combine professional excellence with a rich personal life. She and Ernie Weinrib, her husband of 35 years and colleague of 18 years, have three children.

TED DONEGAN
IRWIN SINGER
PAUL MORRISON
JOE COLANGELO




Gifts to the Law School

The Faculty of Law is enormously grateful for the generosity and benevolence of the following donors, whose gifts to the law school support student bursaries and programs that foster future leaders in law.

The Ted Donegan Bursary

After graduating from the University of Toronto with degrees in electrical engineering and law, Ted Donegan spent 25 years doing the legal work that built towns, refineries and mines, restructuring companies and advising newspapers before taking over management of one of Toronto's largest law firms.

Now, the 70-year-old former chairman of Blake, Cassels & Graydon wants other deserving students to have the same advantages he had – a U of T education free of debt – and so, he has donated $2 million to the faculties of Engineering and Law.

Fostering Leaders in Law

BY ELIZABETH RAYMER

"I wanted a student to go through, first, engineering school, then law school, and not have to borrow a penny," says Donegan, who practised business law before becoming managing partner of Blakes and retiring as chairman in 1994. "Not [borrowing] for tuition, room and board, or books – it's all paid for."

To this end, Donegan has given $600,000 to the Faculty of Engineering and $800,000 to the Faculty of Law for endowed student scholarships, with another $500,000 earmarked for a proposed law conference centre, and $100,000 for a student design and study facility at engineering.

The engineering scholarships will be directed to top highschool students who have been accepted into U of T engineering and plan to take a law degree. The law scholarships are for top students from Canadian engineering schools entering U of T law. And, they should all be "honest, good community people."

"What I wanted [in making the endowed scholarships] was to get somebody trained by U of T just the way I was trained, [but] with modern technology," says Donegan. Then, "to get a really great job on Bay Street and then that they lead their law firm, the way I did."

A high-profile career in the law wasn't necessarily in the cards for Donegan, who hails from the northern Ontario mining town of Sudbury. Nobody from his family had ever gone to university, but his father, who owned a small general insurance business, had bigger plans for his son. He talked to some of the professional, university-educated men in town who suggested engineering as a course of study for young Ted due to his interest in mining.

At U of T, Donegan earned his first degree in electrical engineering in 1957. Back in Sudbury his father needed help with his insurance business but Donegan's professors were encouraging him to go on to graduate school. Since he was interested in business, though, a Sudbury lawyer suggested patent law, where he could make use of his engineering degree. The field was also "very well paid, and that kind of attracted the Irish in me," he quips.

At that time, "there had just been a huge split between Osgoode Hall and U of T Law School," he says, which "involved all the legal lights of the Ontario legal community." The old dean of Osgoode Hall left and became Dean of U of T Law School, and brought with him a group of scholars including Bora Laskin, who taught Donegan constitutional law.

Donegan says his teachers constituted "the historical leadership of the legal profession in Ontario." At the end of his career at U of T, he not only had "this tremendous engineering degree, but now this tremendous law degree, recognized throughout North America as being the [home of] the top legal teachers."

"I'M THINKING AS ALL THIS IS HAPPENING, IT ALL GOES BACK TO THE EDUCATION, AND HOW WITHOUT THE U OF T EDUCATION – BOTH DEGREES – I COULDN'T HAVE DONE IT. THAT WAS KEY TO … WHY I WAS SITTING AT THE [BOARD-ROOM] TABLE."

At that time, the law school was located at the estate of Glendon Hall, which now belongs to York University. "We had all these tremendous professors, like Wright, Laskin, [and] you could go out during breaks and walk around these beautiful grounds," Donegan recalls, where the professors would discuss legal principles and play bridge with their students. "Even after law school, I still played bridge with them. They were a very, very friendly group of people."

After earning his LL.B. in 1960, Donegan articled in patent law at Smart & Biggar in Ottawa. But a couple of his professors told him they thought patent law was too narrow for him, and Donegan began to consider business law. He considered only two firms: McCarthy & McCarthy, where the noted advocate John Robinette practised ("I would only go there if I could work with Robinette," he says, but the job had been promised to a classmate), and Blake, Cassels & Graydon, where one of the top partners was the brother-in-law of his law-school roommate. Donegan arrived at Blakes in 1962.

"I found I had an immediate interest in newspaper law," he says, and joked to a senior partner at the time that he couldn't understand why he was being paid $25 an hour to read the newspaper. He would end up serving as a director of the Torstar Corporation (1993 to 2002), as well as Southam Inc., Southam Communications Inc. and Southam Printing Ltd.

He also did the legal work for many of Toronto's large office buildings being constructed in the 1960s and 1970s, including Commerce Court. "I was becoming interested in financing law; all those big buildings have to be paid for somehow."

Donegan then got involved in mining and development law, working on a power plant being built in Quebec, on the Ontario Hydro uranium contracts, on building towns in Manitoba, refineries and mines. Internationally, he worked in Japan, Europe and Korea.

Later, he worked in restructuring, on such projects as Massey Ferguson and Dome Petroleum. The work was hard and intense, he says; "at least 10 hours a day to get things done, six days a week, sometimes 10 hours a day for seven days a week."

As he became more senior, Donegan became a director of the Canadian Imperial Bank of Commerce, in addition to the newspaper boards.

"I'm thinking as all this is happening, it all goes back to the education, and how without the U of T education – both degrees – I couldn't have done it. That was key to … why I was sitting at the [boardroom] table."

As he got closer to retirement, he says he began to think more of the tremendous value of a U of T education, but also of the financial strains a law degree can put on some families. Donegan had just given $1.25 million to Johns Hopkins University, and believes individual Canadians don't give enough to their universities.

"I thought, 'I've got the money, I'm going to do it.'"

The lifelong bachelor says he's happy to give to the university that gave him so much, "so that the people who will receive [the scholarships] will get as good an education as I got, and then they will be able to contribute to the university."

His father never expected him to return to Sudbury after he left home for U of T and the big city, he says today. "Father knew I was a big-town boy, and that I had big ambitions," says Donegan.

And there's no way he could have done what he did in Sudbury, or without the University of Toronto, he says. "Engineering and law is a terrific combination, [and] U of T is still the top law school in Canada." ■

Irwin Singer Memorial Bursary

Thanks to Rocco and Jennifer Marcello, and their respect and affection for long-time friend, Irwin Singer '60, an important bursary has been established at the law school for a student with financial need specializing in securities and corporate law. After Mr. Singer passed away, the Marcellos wanted to do something special to perpetuate his memory. After considering various options, the Faculty of Law seemed the most natural choice. Together with friends Morton Goldhar, Fred Litwin and Mr. Singer's widow, Pamela, they approached the law school and established an initial endowment of $90,000. Soon, other friends and associates were offering to contribute, and the endowment quickly grew to almost $140,000.

With matching funds from the Ontario government, the Irwin Singer Memorial Bursary is now worth $280,000 and will support an annual bursary of approximately $10,000 for a deserving student.

Of humble origins, Irwin Singer was born in Toronto on December 8, 1935. He received a B.Com in 1957 from the University of Toronto and then went on to obtain an LL.B. in 1960, also at U of T. Called to the Bar in 1962, he had a long and successful private practice, specializing in securities law. "He was a brilliant negotiator and possessed an innate ability to simplify complex issues, bring people together and avoid conflict," said Litwin."He was also a positive and decent human being, and quietly gave to many charitable organizations." In 2004, he formed a capital pool company, Jocada Capital Corp., where he worked, while also continuing to practice law, until his death at age 70. On October 15, 2005, Irwin passed away after a brief illness. Goldhar recalls: "Irwin was a very loyal, kind, caring, generous and supportive friend." He will be deeply missed by his family, friends and associates but thanks to the establishment of the bursary, his memory will live on in perpetuity at the law school.

The Irwin Singer Bursary will be awarded annually to an upper year student on the basis of financial need. Preference will be given to a student with a demonstrated interest in securities law or corporate/commercial law. ■

STUDENT PROGRAMS THRIVE THANKS TO ALUMNI GENEROSITY

PAUL MORRISON '75

Paul Morrison has very fond memories of his years at the law school. As a student in the early 1970's, he was challenged, stimulated, and engaged in activities on a number of fronts, culminating in his election as President of the Students Law Society. As a result, he made many friends and developed the highest regard for his classmates and professors. These friendships survive to the present day. "Whenever I return to the Faculty, I feel as if I am among family," says Paul. "The Faculty is like my home. This is what inspires me to give."

Today, Paul is a senior partner at McCarthy Tétrault in Toronto specializing in litigation, particulary corporate and commercial, class action, securities, competition, professional liability and products liability. He currently serves as the appointee of the Attorney General on the Class Proceedings Committee of Ontario, is a past member of the Board of Directors of the Advocates Society and was also co-chair of its Civil Litigation Task Force.

As an adjunct faculty member of the Faculty of Law from 1982 to 1993, Paul taught a course on Trial Advocacy. His firm, McCarthy Tétrault, also sponsors the Grand Moot annually and he attends almost every year to watch the students perform and to speak as a presenting sponsor. In addition, Paul is a member of the Executive Council of the Law Alumni Association. These on-going ties with the Faculty have allowed him to observe that the quality of the students and faculty remains at the highest level in Canada. "It is a source of pride to all of us that the Faculty continues to maintain its reputation and stature as a leading educational institution."

JOE COLANGELO '76

According to Joe Colangelo, "any place that inspires the advancement of justice needs to be supported." A graduate of the class of 1976, Joe describes his time at the Faculty of Law as "the best educational experience of my life." Over the years, he has kept in touch with many of his classmates and professors who he considers to be his "intellectual parents." Indeed, he believes that his professors taught him vital survival skills for a difficult world and a challenging profession. They inspired him with their commitment to practical wisdom and encouraged the development of essential values of the legal profession: values such as prudence, a strong commitment to fairness, and a belief that justice must be accessible to all.

It is this passionate belief that justice should be accessible to all, not just the privileged and the wealthy, that has compelled Joe to give back to the Faculty of Law over the years. "If the value of accessible and competent justice is to survive, so must the institutions which teach that value," says Joe. "Law schools such as the Faculty of Law at U of T, which teach students the level of commitment that is expected of them, should be generously supported."

Joe was a partner at McCarthy Tétraut from 1984 to 1999 and is now a sole practitioner. His practice is primarily focused on professional liability (medical and legal malpractice) and constitutional law. He is a member of various legal associations and actively involved in volunteer community service.

Every year, many of the law school's alumni donate generously to the Annual Fund which supports a wide range of student activities and academic programs including: diversity and outreach initiatives, pro bono and clinic experiences, international human rights internships, mooting, law reviews and other important extra-curricular programs that enhance the law school experience. The funds we receive from alumni for these programs make an immediate and important contribution to the lives of our students.

We are very grateful for the support of our Annual Fund donors, many of whom have made annual contributions to this program for years. Their gifts have truly made a difference. In this issue of Nexus, we celebrate the donations of two of our long-standing contributors: Paul Morrison '75 and Joe Colangelo '76, who have consistently given to the Annual Fund and were recently inspired to give a significant gift of $1,000 each to the law school.

Remembering Our Friends

ANNA BACON KER Q.C. '52

Anna passed away at home on January 15, 2006 of cancer. She was the loving wife of David, mother of Andrea and Kirsten, grandmother of Jesse, Hannah, Luke and Harry, sister of Liz Tory, Ted Bacon and predeceased by Rena-Mae Smith. Step-daughter of Jack Hemmings, Anna was known at the law school for "walking her own path." She was the first woman to graduate from the "modern" law school and was honoured on International Women's Day as part of the Trailblazers Exhibit. (See page 77)

NORMAN J.P. MELNICK '58

Norman passed away peacefully in a hospital in Glendale California on May 9, 2005. He is survived by his two sons, Blake Melnick and Adrian Dafoe, his two step children, Keeley Level and Kelly Cox and by his two granddaughters, Parker Melnick and Rowan Melnick. Norman loved life and lived it to the fullest. He was a loving father, philosopher, writer, poet and a gentleman who will be remembered for his quick wit, intelligence, who for the interest he showed for all things human.

JOHN BORDEN HAMILTON Q.C. '39

John was just starting his career in law when World War II intervened. He married his high school sweetheart, Gwen Morison (they both attended University College at U of T), and enlisted as a Private in the Canadian Army. John served with the Third Infantry Division in France, Belgium, Holland and Germany and came home a Major. In 1946, he started his own law firm (Hamilton Torrance) in Toronto and was made a Queen's Counsel in 1950. In 1954, John won a federal by-election for the Progressive Conservatives in York West and served as an MP until 1962. A distinguished lawyer, John practised for over forty years, specializing in air transport law and appearing in major cases before the Air Transport Board and Canadian Transport Commission. He travelled regularly across the country and around the world and served on a number of corporate boards, particularly Canadian Pacific Airlines. The son of a railway conductor, John capped off his career in the field as a member of the Royal Commission on National Passenger Transportation from 1989 to 1992. Even after he retired from the law firm, he continued as special counsel to CP Air and its successor Canadian Airlines. John believed in community service, and helped to build Etobicoke General Hospital and rebuild St. Joseph's Health Centre. Both Toronto and Etobicoke gave him civic awards, and he became a Member of the Order of Canada in 1993. In his nineties, when he saw doctors more frequently, John rarely omitted to tell them with a big smile that he too was a doctor, thanks to the Juris Doctor he had received from U of T in recognition of his post-graduate work so many years ago. He loved to build things, design office buildings and renovate houses and cottages in Muskoka. John had been ill for a few months, but was still interested in hearing about family and friends (both old and new) and current events. He loved to meet people and made new friends right up to the end of his life. John passed away at home on November 24, 2005. He was the beloved husband of Gwen for 66 years and the much loved father of Lyn and Cheryl Hamilton.

HARRY IAN MANNING MACTAVISH Q.C. '48

Ian passed away on April 5, 2006 at Sunnybrook Veteran's Hospital. He grew up in Toronto and lived in the city all his life. Ian attended Victoria College and after three and a half years overseas as an Officer with the Irish Regiment and then the Canadian Intelligence Corps, he returned to marry, and begin a family while continuing his studies at Osgoode Hall and the Faculty of Law at U of T. Upon completing his studies, Ian joined the Crown Life Insurance Company where he was Legal Counsel for over 35 years. Following retirement, he became legal consultant to The Colonial Insurance Company. During his entire professional career, Ian assisted many individuals who required legal services. Greatly loved by his family, he will be remembered as a good and loyal friend. He developed relationships in a variety of personal interest clubs and associations: the Royal Canadian Legion, the Canadian Intelligence Corps, the Victoria College Alumni, the Phi Gamma Delta Fraternity, the Bridge Club, the Bowling Club, the Citation Investment Club, Toronto Symphony Series, and the Granite Club Curling and Fitness Sections. Ian enjoyed many wonderful and memorable times with friends and family at Georgian Bay, Kahshe Lake and Clearwater Beach, and wherever he was, he could be counted on to be supporting his beloved Blue Jays. He is survived by his deeply loved and loving wife Joan, daughter Bonnie and her husband Bob; and son Bruce and his wife Nancy. Ian was a very special "Opa" to his seven grandchildren; Danna, Bradley, Kristin and Arran Giroux; Rob, John and Tara and to his great grandson Antonio. In lieu of flowers, the family would appreciate donations to the Veterans' Comfort Fund, or the Canadian Helen Keller Centre, Joan Mactavish Fund.

DONALD JOHN ANDREWS Q.C. '68

After a long and valiant battle with cancer, Donald passed away in Edmonton on November 25, 2005 at the age of 64. Don was born in North Bay and grew up in Cornwall. Upon graduating from the Faculty of Law, he moved to Edmonton (close to Jasper – for skiing and golf), and joined Cummings Andrews Mackay LLP. Don played a key role as counsel in two of the tort trilogy cases that revolutionized Canadian legislative and court practice in the compensation of victims. In 1978, he established precedent-setting decisions in personal injury law that have positively benefited the lives of thousands of injured people and their families. Don had a great sense of obligation to those less fortunate and actively participated in the Canadian Progress Club of St. Albert and many other charities. The annual Cross Cancer Institute Golf Tournament benefited greatly from Don's active involvement. Don is sadly missed by the partners and staff at the law firm who have fond memories of his telling the "Groaner of the Day" from his endless repertoire which was always greeted with appropriate laughter and (frequently) groans. The Annual Staff Christmas Party sadly misses his retelling of his own unique, hilarious and irreverent rendition of "The Night Before Christmas." Don's friendly manner, gentlemanly demeanour, intelligence and sense of fun made him a favourite with all who knew him. He will be sadly missed by family, friends and colleagues.

In 1978, he established precedent-setting decisions in personal injury law that have positively benefited the lives of thousands of injured people and their families.

PROFESSOR DOUGLAS SHERBANIUK

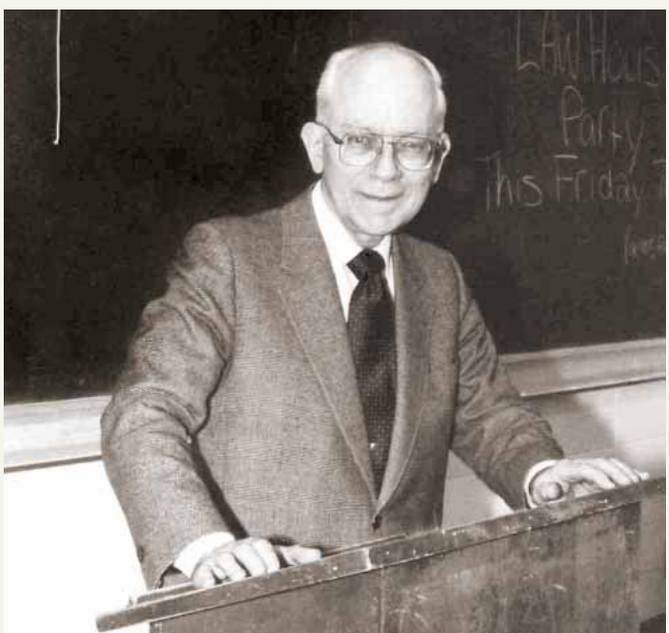
BY THOMAS E. MCDONNELL, QC

Douglas J. Sherbaniuk died on April 8, 2006. In the course of a distinguished professional career, he taught courses in taxation at the U of T Faculty of Law for thirty years, was a member of the research staff of the Carter Royal Commission on Taxation in the 1960s, and served as the Director of the Canadian Tax Foundation for close to 25 years.

I came to know Doug professionally as a practicing tax lawyer in the 1960s, as a teaching colleague at the Law School during the 1970s and 1980s, and as his successor as Director of the Canadian Tax Foundation in 1994. Under his guidance, the Foundation achieved an international reputation as a centre of excellence in tax research and public policy. Doug was at heart an academic and his work at the Foundation and at the U of T Law School reflected his commitment to the motto "Research Matters."

The 1960s and 1970s were exciting times for those interested in taxation and public policy. The work of the Carter Commission was seminal not only to tax reform in Canada, but also in a number of Commonwealth jurisdictions. Doug's work as a member of the research staff of the Commission carried over into his role as Director of the Foundation. That body was formed in 1945 under the joint sponsorship of the Canadian Bar Association and the Canadian Institute of Chartered Accountants to provide both the taxpaying public and the governments of Canada with the benefit of expert and impartial research into current problems of taxation and government finance.

Doug joined the Foundation just as the federal government was moving to implement a significant reform of the income tax structure based on the recommendations in the Carter Commission Report. Much of the analysis of the new rules was sponsored by the Foundation, and its literature forms an important body of work in which the policy and technical rationale of the reformed system can be found. During Doug's tenure as Director, the Canadian Tax Journal attained international recognition as a significant source of technical and tax policy analysis. As well, the Foundation commissioned literally hundreds of monographs, books and studies, and supported regular requests from governments at the provincial and federal levels for assistance in analyzing a wide range of tax issues.



"He was particularly proud of those students who became tax specialists, and made a point of following their careers. He was always available to them for advice and help."

Today, its collection is widely recognized as the most significant of its kind in Canada.

Perhaps Doug's most enduring legacy, however, is his commitment to the literally hundreds of students he taught during his 30 years at the U of T Faculty of Law. At various times throughout the three decades he spent at the law school, Doug taught Business Organizations, Income Tax, Corporate Tax, and Tax Policy. "He probably taught more students in his Tax courses than any other faculty member in the country," says colleague Professor Arnold Weinrib. "He was particularly proud of those students who became tax specialists, and made a point of following their careers. He was always available to them for advice and help." Doug also encouraged colleagues and lawyers to write about tax policy and problems in order to inform public debate. Professor Weinrib recalls: "Doug took the teaching of his courses as seriously as one would expect from a scholar who devoted his working life inside and outside the Faculty to tax issues and the tax community."

Those of us who came to know Doug on a personal level came to enjoy a subtle sense of humour that was often hidden behind the quiet reserve he presented to the public. He was a great fan of professional tennis and a keen observer of the political scene. He achieved much in his career as Director of the Foundation and as a Professor at the University of Toronto, Faculty of Law. The respect he earned from his peers was publicly acknowledged on his retirement in 1994 by the naming of the Foundation's library in his honour and the creation of the Douglas J. Sherbaniuk Distinguished Writing Award.

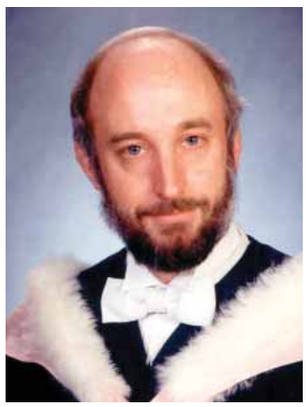
Thomas E. McDonnell QC was a member of the teaching faculty at the Law School in the 1970s. He followed Douglas Sherbaniuk as Director of the Canadian Tax Foundation in 1992. He currently practises tax law with the Toronto office of Thorsteinnsons LLP,Tax Lawyers. He is the editor of *Tax For the Owner/Manager*, published by the Foundation, and a regular contributor to Foundation publications.

J. ROBERT HEATLEY '73

Bob passed away on January 30, 2006. He was born in Toronto in 1948 and graduated from Victoria College in 1970. Bob was an outstanding swimmer for the Varsity Blues swim team and had very impressive records. He was on three intercollegiate championship teams and was a Canadian Inter-university Sport record holder in the 100m butterfly. According to his coach, Robin Campbell, Bob epitomized U of T athletics: "he was a bright student and a tremendous athlete." His student days were a very special time of his life in which he was very happy and proud of his accomplishments. After 25 years as a corporate lawyer for both Crown Life and Foresters, Bob switched gears and derived great satisfaction from serving pet-loving customers at his local Pet Valu Store at Bayview and Merton. Bob leaves behind his beloved wife Betty Robertson, his two greatly loved beautiful daughters Beth and Brenda; his loving step-sons Scott and Blaine Robertson, daughter-in-law Michelle and his two special granddaughters Jessica and Katrina. Besides his family, Bob had a great passion for music. The many hours he spent singing in the Christ Church Deer Park choir brought him true joy. Betty, his family and friends will greatly miss Bob's compassion, dry wit, and the loving attention and care he gave to them.

JOHN BRIAN DONOVAN '91

A tragic accident took the life of Brian Donovan on October 29, 2005 in Melbourne, Australia. Brian had a distinguished academic career as a student in Winnipeg, Toronto, Berkeley and Oxford. He served as law clerk for Supreme Court of Canada Chief Justice Antonio Lamer, and went on to practice law in Toronto and Calgary. Brian taught at the Faculty of Law at Dalhousie University and, in the last year of his life, at the Faculty of Law at Monash University in Melbourne.



WILLIAM ANDREW GARAY '75

Surrounded by his children, Bill passed away in Ottawa on December 19, 2005 at the age of 54. He leaves behind his loving sons Robert, Ryan and Jonathan and his sister Anne. A self-made man from humble immigrant beginnings, Bill made his family extremely proud and was adored by them. Bill articled in Ottawa at Goldberg Schinder and was called to the Bar in 1977. He worked for a law firm for a couple of years and in 1979, he opened his own practice and continued as a sole practioner until his passing. Bill specialized in civil litigation and obtained a Chartered Insurance Professional designation in 1985. He was actively involved in charities, his favourites being Reach, March of Dimes, United Jewish Appeal and Vista Centre. His love and passion for music along with his talented guitar-playing led him to become a member of Verdict, a band of lawyers with musical talents that performed at many charitable events. Bill had a brilliant mind, was well known for taking on cases that no one else would, was held in high esteem, and is sorely missed by the legal community in Ottawa. He was a fun and loving character, almost child-like when it came to leisure pursuits, but a high achiever when it came to sports, music and his passion for history and law. Bill loved life and enjoyed it to the fullest. Dedicated and caring, Bill will be missed and lovingly remembered forever, especially by his sons and sister.

EMILIO JOHN GAMBIN '53

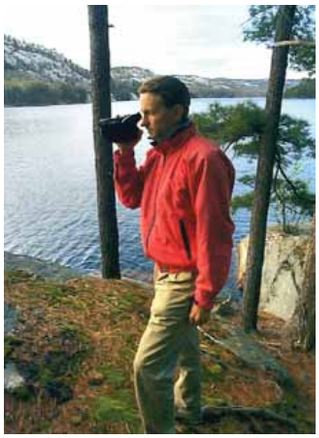
"A True Gentleman" is how many will fondly remember Emilio John Gambin. Born in Windsor, Ontario on October 26, 1928, the only child of Italian immigrants, Carlo and Maria Gambin, Emilio passed away on November 14, 2005, at the age of 77 in Toronto. Emilio spoke often and fondly about his time at the University of Toronto Law School under the tutelage of some of the great legal minds of the era, including Bora Laskin, Cecil A. Wright, and his favourite, John Willis. Upon graduation, Emilio established, with his friend Rudolph P. Bratty, the law firm of Gambin & Bratty, a thriving and successful law practice that quickly emerged as a leader among the growing number of Italian-Canadian law firms in the Greater Toronto Area. Although proudly Canadian, he embraced all things Italian, including language, cuisine, history and culture. He assisted many benevolent and community causes, and sat on numerous public and private boards, both charitable and corporate. He was respected for his legal acumen as well as his wise and common sense approach to the everyday problems of his clients. Emilio was a role model and mentor for many within the legal community and his positive disposition touched all who knew him. Emilio leaves behind Yola, his wife of fifty years, four children (Charles, Mary, Janet and Richard), their spouses and twelve grandchildren.

HARRY SUTHERLAND Q.C. '52

Following a brief illness, Harry passed away in Toronto on February 14, 2006 at the age of 76. He was a highly respected and colourful senior corporate partner at Fraser & Beatty until his retirement in 1996 and was most proud of having been appointed a Queen's Counsel. Harry was a mentor and teacher to many lawyers and edited several editions of Fraser and Stewart on *Company Law in Canada*, a definitive text on Canadian corporate law. Harry was Canada's pre-eminent philatelist. For more than 50 years, Harry played a large role in the management and direction of Canadian and international philately. He was Chairman of the Vincent Graves Greene Philatelic Research Foundation. He was the longest serving President and thereafter Secretary of the Royal Philatelic Society of Canada and was an International Judge under the Fédération Internationale de Philatélie (FIP). Harry signed the Roll of Distinguished Philatelists in 1991, the highest philatelic honour one can aspire to. The Royal Philatelic Society of London gave him an Honorary Fellowship, a rare honour bestowed infrequently. Harry was also honoured with the FIP medal and the Lichtenstein Award for his contributions to philately. At the time of his death, he was Treasurer of the Federación Inter-Americana de Filatelia. Harry was a longtime member of the Commanderie de Bordeaux, the York Club, the Toronto Club, the National Club and the Rosedale Golf Club. Those who knew Harry will have fond memories of his genuine warmth and concern for others, dry wit and wisdom, exhilaratingly deep conversations, and love of wine and stamps. Harry was always a perfect gentleman, had a sense of fun and will be greatly missed by his many friends.

DONALD JAMES HUNTER WARNER Q.C. '61

Don passed away unexpectedly in the 70th year of a rich and fulfilling life on December 21, 2005. Don grew up and established his career in Lindsay, Ontario, where he practiced law for 40 years. During his years of practice, his intellectual prowess, combative spirit and refusal to be intimidated served his clients well. He served as the Area Director of Legal Aid for Victoria and Haliburton Counties from the inception of the Ontario Legal Aid Plan in 1967 to his retirement in 2003. He was appointed Queen's Counsel in 1982 and spoke fondly of his friends and memories from the Faculty of Law. Don is deeply missed and lovingly remembered for his warmth, generosity and wit by his wife Catherine (Pick), his children Alison ('95), Mark and Louise, his son-in-law Rion Gonzales and his grandson, Cole.



STEPHEN ANDREW MASON '84

Stephen died tragically on March 3, 2006 at the age of 46. He was the proud father of two wonderful daughters, Monica and Julia and the much loved only son of Alan and Janet. His law career extended from 1984 through to the present with three Ontario Government Ministries: the Office of the Attorney General, Community and Social Services and Department of Labour. Many of Steve's friends and colleagues will remember him for his dry wit and sense of humour. His talent in this area was put to use in the Law School Follies in the early 1980's where he appeared in sketches, as was the custom, skewering various faculty members. At a post graduation reception, Dean Frank Iacobucci approached his parents and commented: "I'm so relieved that Stephen is graduating, I've been dreading the prospect that I might be his next victim!" Steve had a great love of the outdoors and was never happier than when hiking, biking or canoeing. He leaves an unimaginable gap in the lives of his family and friends.

GREGORY J. ARBOUR '75

Greg died on January 7, 2006 after a brief battle with cancer. He was a sole practitioner in Vancouver BC, cared deeply for his clients, and was concerned about helping them have their rights and needs recognized. Greg's work was not with the rich or the famous but rather with those he felt were sometimes under-represented in the civil litigation field. He also gave of his time at a legal clinic sponsored by a community charity. Some of Greg's fondest memories were of his days at the Law School. He enjoyed learning, conversations with classmates and professors, late afternoons playing pinball in the lounge, and cheering on the Varsity Blues Hockey Team. In addition to law, Greg was also passionate about bridge and was a Life Master for many years. Greg is missed by his colleagues and friends but especially by his wife and two teenage sons.

LUCIA MARIA TEN KORTENAAR '83

With the passing of Lucia ten Kortenaar on December 31, 2005, the Toronto legal community lost a valuable and enthusiastic advocate, mentor and friend. Lucia articled and began her career as a tax lawyer at Osler, Hoskin & Harcourt. In 1987, she joined Tory, Tory, DesLauriers and Binnington where she became a partner in the Torys tax group in 1991. Lucia was respected for her honest and straight-forward approach to both her personal and professional life. She loved her work and regarded the teaching and mentoring of articling students and junior lawyers as an important part of her role. Lucia was devoted to her firm and to her clients who were the lucky beneficiaries of her intellectual rigour, thoughtful planning and tenacious representation. Throughout her illness, she continued to work from her home for her clients, whom she did not want to "let down." Lucia applied the same care and strength in her battle against breast cancer and took the time and effort to share with others the information, insight and inspiration that came to her through this experience. What may have been less well known in her professional life is that Lucia was also a talented pianist and studied under musicians at the Royal Conservatory of Music in Toronto. Lucia had many nieces and nephews, and one of her favourite endeavours was teaching them to play the piano. She held annual Christmas piano recitals in her home and showed great pride as her young students performed for family and friends. Lucia's family, friends and colleagues enjoyed her irreverent sense of humour and infectious laugh. She is missed every day. In Lucia's memory, a scholarship has been set up for young pianists taking piano lessons at the Royal Conservatory of Music. Donations to the Lucia ten Kortenaar Piano Scholarship Fund can be made through the Royal Conservatory's website at www.rcmusic.ca.

LAST WORD

More than 150 years ago, feminist
Louise Otto Peters (1818-1875) said:

> “The history of all times, and of today especially, teaches us that women will be forgotten if they forget to think about themselves.”

For the LAST WORD, five of our very distinguished women graduates offer their thoughts on their careers, and what it has meant to be a woman in a highly demanding and traditionally male-dominated profession.

BY JANET MINOR '73

The Bumpy Road

We entered law school fresh from the 60's revolution and graduated full of energy, enthusiasm and ideals. We were conscious of our position as a small minority in the profession. We expected the road to be bumpy and that we would encounter difficulties because we were women. But, we were confident that, with persistence, merit would overcome resistance based on stereotypical views.

Those of us who wanted to be litigators quickly learned in that area, stereotypes were particularly strong and persistent. Litigation was seen as the natural habitat of men. Gladiators, after all, were male. The ability to litigate was linked to chromosomes.

There were early warnings: in law school, the guest speaker, a prominent litigator, who advised that of course his firm employed women, but only as solicitors because they were good at detail.

Our professional lives were characterized by much uncertainty. The small number of senior women in the profession were not in litigation so we had no mentors or role models there. The profession and the courts seemed unprepared for women in litigation; their response was confused.

I recall now amusing clashes of traditional "manners" with professional etiquette and hierarchies. When articling, students were invited to the firm's holiday lunch. As the only woman, I was seated next to the senior partner; the other articling students were seated below the salt.

LITIGATION WAS SEEN AS THE NATURAL HABITAT OF MEN. GLADIATORS, AFTER ALL, WERE MALE. THE ABILITY TO LITIGATE WAS LINKED TO CHROMOSOMES.

Students began their courtroom training by arguing motions before masters (all men). We always stood when they entered and remained standing until the master was seated and commenced hearing the first motions on his list. Often lawyers and students would not attend until closer to the anticipated time of their motions. One master always interrupted arguments and stood up whenever a woman student or lawyer entered, even on occasion directing her to a seat.

Less amusing was the realization that we might not be treated the same as our male counterparts in work assignment. A senior litigator returning from a case in Vancouver thanked me for my work and praised me for developing the winning argument in the case. He then added he was sure I understood why he hadn't taken me with him (I had assumed the trip would have been too costly.). He elaborated that it would have been totally improper for a young woman articling student to travel out of town on a case with a male litigator.

After articling we were hired, often as the first women in the firms' litigation groups. At the same time we were often told that while the firm had complete confidence in women, they were not sure how their clients would react. The thrill of being hired was accompanied by uncertainty – would women be given the same kind of work, would we have the same earnings, would we advance, and would more women be hired? The answer to all these questions was frequently no. When firms saw no reason to hire more than one woman in litigation, many opened their own offices as sole practitioners or all women firms.

Women seemed to have arrived in the courtroom unexpectedly. There were no women judges on the Supreme Court of Canada or the Court of Appeal. The Hounourable Mable Van Camp was the only woman on the Superior Court. Junior counsel were often mistaken by court staff (if not judges) for anyone involved in the case, except counsel. There were few facilities in courthouses for women litigators. Barristers' lounges and change rooms were men only. We frequently gowned in furnace rooms and large closets. Judges response to women litigators ranged from being patronizing to, I believe, totally accepting. We were aware, nonetheless, that some expressed the view that women had no place in the courtroom. Some felt no constraint in making remarks in the courtroom about a woman litigator's voice or appearance.

We encountered awkward situations and we encountered outright discrimination. There were no policies or protocols to assist us in addressing these issues. We turned first to our women colleagues for advice, support and debate about the best strategic response. How should we respond when accompanying senior lawyers to meetings or social events in clubs whose memberships were restricted to men with separate entrances for women guests? How could we put an end to sexual harassment by a senior lawyer in our workplace without incurring retaliation? Was a particular incident we encountered based on discriminatory views? If so, should we address it directly or let it go by?

We developed strategies. Some were symbolic. Some colleagues always used their initials in correspondence, never their first names, so that at least at the beginning stages of litigation, opposing counsel would not be aware of their gender. We learned which senior men we could rely on as mentors, who would assign work on merit and stand by us when challenged whether we would be tough enough to handle a particular file or client. The most common strategy was to demonstrate our ability through very hard work – our motto: Be over-prepared.

In 2006, we have seen great changes in our profession, most importantly greater representation of women in all areas of practice and at all levels of the judiciary. Women litigators are no longer curiosities. There are still vexing problems for women, especially in the areas of advancement, compensation and retention in the profession.

Much work remains. ■

Janet E. Minor '73, is General Counsel in the Constitutional Law Branch of Ontario's Ministry of the Attorney General. After two years of general litigation at Manning, Bruce, she joined the Ministry in 1977. She argues cases on behalf of Ontario before all levels of Court. Janet is a Bencher of the Law Society of Upper Canada.

BY BETH ATCHESON '78

Our Own Best Guides

Who knows what attracts each of us to our vocation? In my case, I was finishing a year as a Parliamentary Intern in Ottawa. I decided that I should do something "useful", rather than going to graduate school to do Victorian studies (although the common law turned out to be a different tributary of the main Victorian studies river). I also knew that I wanted to see what life was like for a little fish in a bigger pond.

So I came to be at U of T in the fall of 1975 (as did Gary Kaplan, a fellow Intern). Thirty years later, I am glad I did it. At the time, I was not so sure. From the vantage point of 2006, here is a quick look at what I was doing in law in 1976, 1986, 1996 and now.

In 1976, I was finishing a rocky first year – I never did figure out how to write law school exams successfully. The professors seemed more distant than I was used to, the students (particularly the upper year ones), very confident. While I had the company of wonderful women in significant numbers (we were about a third of the class), there was only one woman on the full-time faculty, the exemplary Mary Eberts. Marie Huxter, the Assistant Dean, was also a mentor to many of us. I spent the fall reading English novels, particularly Jane Austen. In the summer of 1976, I went back to the Hill to work in the office of the Parliamentary Counsel on a range of statutory interpretation and procedural issues.

In 1986, I was practicing law as a young partner at a firm then known as Cassels Brock & Blackwell. I had joined that firm after articling at the Ontario Ministry of Consumer and Commercial Affairs, specializing in the regulation of financial institutions and pensions. I have stayed with that technical specialty throughout my career. My life after my call to the bar in 1980 was enriched by the volunteer work I did to advocate on behalf of women's equality in the Canadian Charter of Rights and Freedoms and to found the Women's Legal Education and Action Fund (LEAF). Several things were key to our success at that time. The first was the scholarship on how women experienced society and the law – almost all of it created by women scholars who took questioned assumptions and perspectives. The second one was the community of women – we had enough critical mass to be a force (and to have fun doing it). The third one was the confidence that comes from education – we believed that our views could take on those of the elites.

In 1996, I was the Director of Financial Services Policy at the Ontario Ministry of Finance. I had just finished sitting as the Ministry representative on the Task Force on the Regulation of Securities in Ontario, chaired by then Dean of the Law School, Ron Daniels. I had left Cassels in 1987 to become the Vice-Chair of the Ontario Automobile Insurance Tribunal. Although this was a flawed regulatory experiment, it was fascinating to be in on the start-up of a tribunal and to sit in a function in an intense quasi-judicial setting. From the tribunal, I went to the Ontario Insurance Commission, which in turn became the Ontario Financial Services Commission, and then to the Ministry. At the end of 1996, with our then six-year old son starting school, I decided to move to a project management and policy consulting practice so I could have more scheduling flexibility. I am still there in 2006.

I seem to have had a career meander, rather than a career path. I have been a practitioner, an adjudicator, a regulator, a civil servant and a consultant. I finally think I know a little law, and a lot about what law can and cannot achieve. While the process of achieving credentials in law is a daunting and competitive one, the list of fascinating, productive and rewarding things to do with the training is endless.

> ***WHAT HAPPENS IN LAW MIRRORS WHAT IS HAPPENING IN SOCIETY GENERALLY. IF WE WANT CHANGE, WE HAVE TO BE PART OF MAKING THE CHANGE.***

There was, and I believe, remains a degree of overt discrimination – not only in respect of women in law, but also others who are different from the historic template for success. There is also the underlying systemic challenge – practice does not adequately take into account the responsibilities and life pattern that many women, and an increasing number of men, have in their lives. Women continue to leave the practice of law in greater proportions than men. Women also have been for some time taking on leadership roles in the profession. Although I think that legal institutions and their leaders are in a superior position to model change, what happens in law mirrors what is happening in society generally. If we want change, we have to be part of making the change – and legal training gives us tools, skills and frameworks for that work. As Jane Austen said, "We have a better guide in ourselves, if we would attend to it, than any other person can be." ■

Beth Atcheson '78 has served as a member of the Canadian Human Rights Tribunal, as a Senior Researcher with the Federal Task Force on the Future of Financial Institutions in Canada and the board of what is now Imagine Canada. She was named a Toronto YWCA Woman of Distinction in 1992, and in 2006 received the President's Award from the Women's Law Association of Ontario.

BY ELIZABETH MCINTYRE '76

The Intersection of Social Justice and Fate

Upon the occasion of my receipt of the Law Society Medal I was asked by the Law Society to comment on my most significant professional achievement. In reflecting on my thirty years since graduation from the Law School, I am struck by how serendipity has such an impact on one's life and career in the law. The employment opportunities, the legal cases and most importantly the people who intersect and form part of your career may come your way almost by chance. While in law school, like many students I was motivated toward a career pursuing social justice issues in general and women's rights in particular. However, while one of my best friends, Julie Hall, was a nurse, it was the rather fortuitous assignment to the Ontario Nurses Association during a summer job placement through the Ministry of Labour that directed and focussed me irrevocably on social justice, professional and employment issues affecting the nursing profession in particular, and other health professionals and working people in general.

Ultimately, I think that my most important accomplishments have been the relationships that I've developed with professional colleagues striving to achieve social justice.

Early in my legal career I met two motivated, activist women practicing primarily in other areas of law but both having similar interests in public policy, social justice and women's rights. Together we formed Symes, Kiteley and McIntyre, the first all-woman law firm on Bay Street. Partnership in that firm led to involvement in the "Grange inquiry" where we represented some 38 nurses whose practices were brought under intense scrutiny as a result of the unfortunate deaths at the Hospital for Sick Children. Additionally, my association with that firm allowed me to become involved in broader social justice issues, including my appearance at the Supreme Court of Canada on behalf of The Legal Education and Action Fund to argue the issue of the appropriate limitation period for sexually abused individuals. Reading the majority reasons of Justice Laforest in that case, which adopted much of the argument in the LEAF factum, was a truly gratifying experience.

Since joining the Cavaluzzo law firm more than 17 years ago, I have had the privilege of working with many dedicated partners and associates whose common mission has been to fight for social justice for working people, whether they be airline pilots, baseball players, teachers, optometrists, postal workers or nurses. But my main interest has always remained working with members of the nursing profession and other health care professionals. That interest, in fact lead to my involvement, as co-counsel with Marlys Edwardh, in criminal proceedings arising out of criminal charges laid against two nurses accused of homicide. After lengthy and hotly contested proceedings, the Crown withdrew the charges. Unfortunately, it seems that 20 years after the Grange inquiry, much work remains to be done to educate the police and other authorities as to the true operations of our health care system.

Ultimately, I think that my most important accomplishments have been the relationships that I've developed with professional colleagues striving to achieve social justice, and my role in assisting many of the women and men in the nursing profession to achieve justice individually, and as a group to gain increasing recognition of the very significant contribution that they continue to make to our health care system under often difficult conditions. Much work remains to be done. It is very encouraging for me to see that many of those graduating from law school today have a keen interest in the issues that I have found to be so compelling and rewarding. I hope that I can be of assistance to younger members of the profession in finding a law career that allows them to pursue these interests. ■

Elizabeth McIntyre '76 joined Cavaluzzo Hayes Shilton McIntyre & Cornish LLP as a senior partner in 1988. Liz has been particularly successful negotiating innovative alternative dispute resolution procedures in the fields of human rights, medical malpractice, labour law, professional liability and professional discipline/regulation. She was recently selected by the Law Society of Upper Canada as a recipient of the Law Society Medal.

BY THE HON. GLORIA EPSTEIN '77

A Matter of Perception

Each decision I make is important, to someone – certainly to those involved in the particular case. But some decisions attract a greater degree of importance because of the nature of their impact.

One such decision was the case of *M. v. H.* [1999] 2 S.C.R. 3, a case that was assigned to me in September 1993. I remember this time vividly. I was sworn in as a judge the week before, in the presence of my only sister who had just been diagnosed with breast cancer.

On July 1, 1995 Carolyn died. We were very close and while I was fully aware of how ill she was and of the inevitability of her fate, I was not prepared for the effect her death would have on me. In a family where I am considered the strong one, the one who can make things happen (or prevent them from happening), I could do nothing to save my sister.

For a time I fell into a serious depression.

During this painful period, I heard the argument of the constitutional question in *M. v. H.* – whether the provision in the *Family Law Act* that restricted access to our courts for the purpose of determining support obligations to those involved in heterosexual relationships, violated rights guaranteed under the *Charter.*

I released the decision in February of 1996, unprepared for the reaction. Virtually every major newspaper featured a front-page story about the decision, frequently inaccurate and invariably critical. The criticisms were aimed to some extent at the legal reasoning but more often at the consequences of judicial activism.

I recall attending a fundraising event for breast cancer shortly after the release of my decision and being accosted by people anxious to let me know they found my decision to be not only wrong but wrongly motivated. The word "stupid" in the context of my legal analysis crept into conversation and legal scrutinies.

My outward reaction to the assaults was always the same. I told my critic that I respected the fact that he or she had views that they wished to share. However, as a judge, I was not called upon or entitled to express my personal opinion either in my judgment or otherwise. Rather, I was asked to determine facts, apply the law to those facts and arrive at a legally supportable conclusion.

But while my public response was measured, my private one was not. I found the attacks painful. I was troubled by the unwillingness of individuals to examine the decision carefully, understand its consequences and appreciate the rationale. The assault made life that much more difficult given my struggle to overcome the personal difficulties I was experiencing.

However, as I say to my children "things have a way of working out." And they did. The parties, M. and H., resolved their differences. The Supreme Court of Canada upheld the decision, ruling that the denial, to members of same-sex relationships, of the benefit of being able to claim support, violated section 15 of the *Charter* and was not saved by section 1. And I, through sheer heavy lifting, worked my way out of my depression.

More importantly, perhaps, the decision resolved the debate about the importance of our laws being equally accessible to those involved in homosexual relationships and at the same time fuelled the debate about judicial activism, providing Canadians with an opportunity to explore the strengths and weaknesses (in the eyes of some) of our legal system. Similarly, the experience gave me an opportunity to explore my own strengths and weaknesses.

Is the fact I am a woman at all relevant to this experience? Some may say yes as the story involves issues some identify as "women's issues" – sisterhood, breast cancer, and family law. I would disagree. As I see it, it is about strength, individual and collective – the strength to do what is right, though it may be unpopular; the strength to withstand criticism; and the strength to overcome life's hurdles. ■

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Justice Gloria Epstein '77 was appointed to the Superior Court of Justice of Ontario in 1993. She is co-chair of the Canadian Institute for the Administration of Justice Education Committee and a member of Chief Justice McMurtry's Committee investigating the accessibility of the courts to people with disabilities. She is a strong supporter of the Canadian Women's Foundation and the International Women's Forum. Justice Epstein has a busy life with five children and a challenging hobby of show jumping horses.

BY LINDA ROTHSTEIN '80

Looking Back; Looking Forward

In January of this year I was asked to address the first year law school, "Bridge Week" class on the subject of the Future of the Legal Profession. It was a tall order given that I have not been particularly skillful at predicting my own future, let alone those of my colleagues or those just starting their careers.

But I decided to give it a try because it compelled me to reflect on the twenty-five years since I graduated from law school to see if the past offered any clues about what is to come.

I told the first year class that it is easy to get discouraged about the future of the legal profession and about the future of women and other excluded groups in the profession. Many barriers still impede the full participation and success of the racial minorities and those from less privileged classes and women.

For most women, as best as I can tell, practicing law and raising children continues to feel like trying to ride two bicycles at the same time. The consequences of having children continue to create a disproportionate burden for women lawyers both at home and at the office. The most up to date evidence reveals that women continue to report loss of seniority and delayed promotion, unfair workloads, a testing of work commitment and increased stress from competing demands following a return from parental leave.

Although many of these issues also affect my male colleagues, these same male colleagues rarely see them as barriers to their full participation and success.

FOR MOST WOMEN, AS BEST AS I CAN TELL, PRACTICING LAW AND RAISING CHILDREN CONTINUES TO FEEL LIKE TRYING TO RIDE TWO BICYCLES AT THE SAME TIME.

But we have nevertheless come a long way: our laws, our legal culture and society's basic notions of fairness and equity are dramatically more favourable to women and other minorities than they were twenty-five years ago. The evolution of family law, employment law and discrimination and human rights law have all seen major achievements for women and other discriminated groups. The eradication of the system of separate property during marriage, the concept of adverse effects discrimination and the duty to accommodate, the notion of a poisoned work environment caused by sexist or racist behaviour, have moved us far beyond the imagination of my most idealistic law professors. This is quite apart from the changes that have taken place as a result of the *Charter*. There is every reason to believe this pace of change will continue.

Because law and culture are so intertwined, legal culture has changed dramatically too. When my law school class entered the legal profession 25 years ago, it felt like an all white male club on a good day, a white male locker room on a bad one. There were few women judges and no matriarchs anywhere in sight. Men were everywhere: they were the clients, the partners, the politicians, the opposing lawyers and the judges. When I graduated from the law school, the idea of four female judges on the Supreme Court of Canada would have been dismissed as "women's libbers" heresy.

Most importantly, a life in the law changes us as individuals. My legal training – in law school and ever since – has taught me courage, has given me grit and staying power, has forever changed my sense of fairness and my ambition to create or ensure fairness wherever I can. We may never have the chance to argue a *Charter* case in the Supreme Court of Canada but, we can change the world incrementally, inching our way forward by hundreds of little decisions, more of which are right than are wrong.

The hardest lesson to learn is that a career in law is not a race, let alone a sprint. It is a journey. There's more than a single path to explore. There's time to learn from our mistakes. There's time to wrestle with the feelings of ambivalence that afflict most successful practitioners. There is time to raise our children and to seek not just professional success but professional fulfillment. ■

Linda R. Rothstein '80, is the Managing Partner of a Toronto litigation boutique, Paliare Roland. She is engaged in a broad civil litigation and administrative law practice. She is the immediate past President of the Advocates' Society of Ontario and a Fellow of the American College of Trial Lawyers. She is the proud mother of two children and two step-children, none of whom want to be lawyers.

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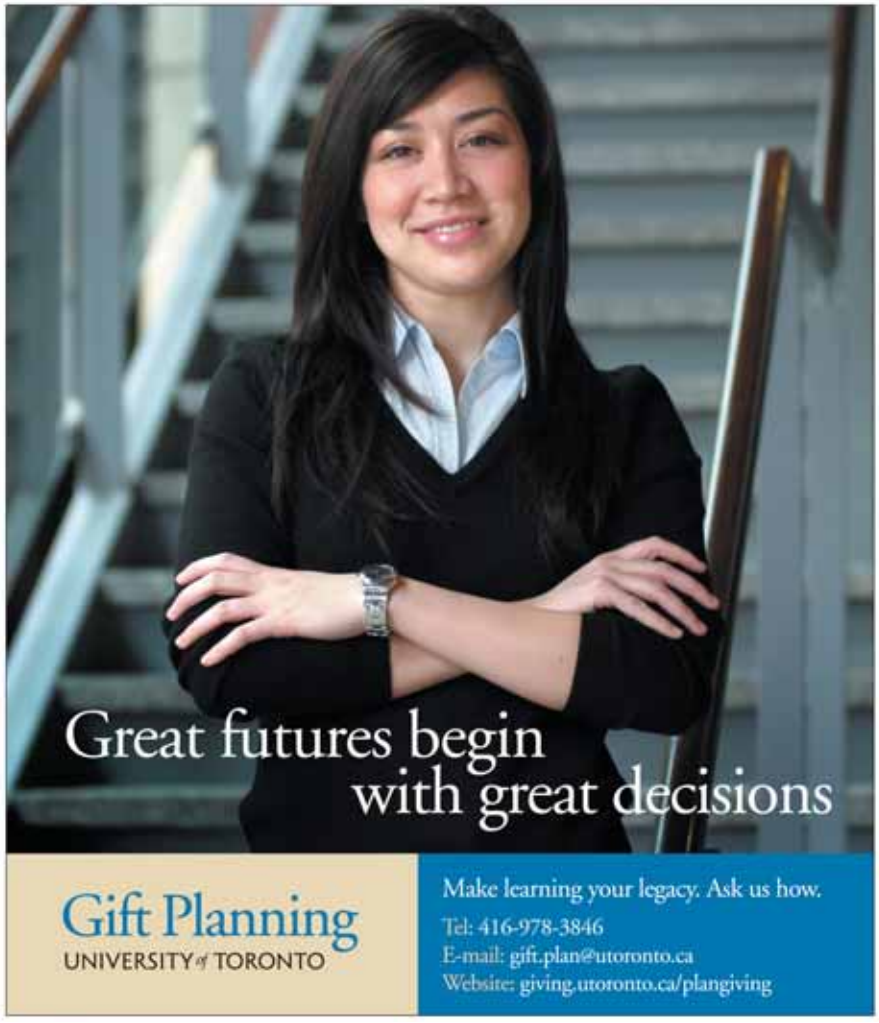

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Elizabeth McIntyre '76

"Ultimately, I think that my most important accomplishments have been the relationships that I've developed with professional colleagues striving to achieve social justice." **Page 110**

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