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UNIVERSITY OF TORONTO, FACULTY OF LAW

WINTER 2006/07

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UNIVERSITY OF TORONTO FACULTY OF LAW

IABC CANADA Silver Leaf Awards

International Association of Business Communicators awarded the 2006 Silver Leaf Award of Excellence to the U of T Faculty of Law for their Women Trailblazers photographic exhibit unveiled on March 8, 2006, International Woman's Day.

Silver Leaf is Canada's premiere professional awards program celebrating excellence in business communication.

IABC CANADA

Don't Forget To Register for the Alumni Directory!

This past summer, the Faculty of Law launched a new service for alumni on our website. The Alumni Directory provides you with a forum to share information about your life, catch up with classmates, and keep in touch with the law school. To register, please visit the Alumni & Friends page of our website at **www.law.utoronto.ca**. If you have any questions or require assistance, please email **xarissa.thompson@utoronto.ca.**

UPCOMING FACULTY BOOKS

WATCH FOR THESE FACULTY BOOKS IN 2007

CANADIAN HEALTH LAW AND POLICY (3rd EDITION)
Prof. Colleen Flood (edited with Jocelyn Downie and Tim Caulfield)

SEXUAL CITIZENS: THE LEGAL AND CULTURAL REGULATION OF SEX AND BELONGING
Prof. Brenda Cossman

TAX AVOIDANCE IN CANADA AFTER CANADA TRUSTCO AND MATHEW
Edited by Prof. David Duff (with Harry Erlichman)

THE AESTHETICS OF INTERNATIONAL LAW
Prof. Ed Morgan

THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW
Edited by Prof. Jutta Brunnée (with Daniel Bodansky and Ellen Hey)

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

Canada has an illustrious tradition of leadership on international issues. As a nation we take our role and obligations in the world seriously. We embrace our global responsibilities, and in doing so have played a crucial role in complex issues including trade policies, foreign aid, defence, human rights and institutional reform. Canada has earned the respect and admiration of countries and citizens around the world for our promotion of values, policies and practices that strive to make the world a fairer, more secure and peaceful place.

Yet the world today is vastly different from the one in which our parents, and their parents, were raised. Globalization has created a new world order. Issues and fields of inquiry that were once thought to be within the domain of domestic politics now escape those borders, connecting us all in new and increasingly complex ways. Citizens around the world are deeply affected not only by events taking place within their own countries, but also by those events around the world, in law, politics, commerce, culture, technology, governance, and much more.

The challenges we now face, and their solutions, are ever more complex. Historians and theorists ask how Canada's achievements and unique position are relevant to this new world order. How can we make a meaningful contribution to the challenges that face us today?

"...our country is well positioned to serve as a model global citizen for the challenges we all face. And no where is this capacity, and this commitment, more evident than in the work being done by the faculty, students and alumni of our uniquely Canadian institution."

Recently, some commentators have pointed to Canada's diminishing international status and have lamented that we no longer have an important role to play. They worry that our professed sovereignty and potential influence in political and diplomatic issues worldwide are mere platitudes. A recent book by Professor Jennifer Welsh of Oxford University – *At Home in the World* – challenges that view. Welsh argues passionately and convincingly that a renewed and confident Canada is possible and that now, perhaps more than ever, an active global citizenship is required if Canada is to contribute to solving the world's most pressing problems.

As dean of one of the world's most distinctive and distinguished law schools, I believe that Canada can make a critical contribution to world affairs and that law will play a vital role. Our faculty, students, and alumni are leading the way in matters of both global and local significance. They are deeply committed to inquiring into important world issues, challenging received wisdom, and providing unique and meaningful solutions. Indeed, as Welsh suggests, our country is well positioned to serve as a model global citizen for the challenges we all face. And nowhere is this capacity, and this commitment, more evident than in the work being done by the faculty, students and alumni of our uniquely Canadian institution.

In this issue of *Nexus,* Professors Jutta Brunnée, David Dyzenhaus, and Michael Trebilcock explore themes and issues relevant to Canada's role in the world. They reflect on international sovereignty and our duty to protect, the challenges and appropriate responses to threats to national security in liberal democratic societies, and rule of law reform in developing countries. Professor Kent Roach, who is profiled on page 6 of this issue, is deeply involved in research on issues of vital global concern, including most notably anti-terrorism. And Prof. Brian Langille, whose most recent book *Boundaries and Frontiers of Labour Law* is featured on page 40, is doing important scholarship that is particularly timely in light of the proliferation of new work arrangements and heightened global competition. Also in this issue are the unique perspectives of Professor Nehal Bhuta, who has recently joined the law school from Human Rights Watch, and Darryl Robinson, Acting Director of the International Human Rights Program, who spent several years at the International Criminal Court. Like our faculty, our students are also taking a leadership role in contributing their unique perspective to global issues, helping individuals and societies around the world. Five of their stories are featured in the Focus section of this issue starting at page 23.

The problems that face today's increasingly interconnected world require fresh, innovative and critical thinking. This law school occupies the place that it does because it has always been committed to approaching problems in a rigorous and creative way. Today members of the law school community continue that great tradition, tackling the problems that are common to this small planet, and striving to better understand and to make a positive difference in our world. ■

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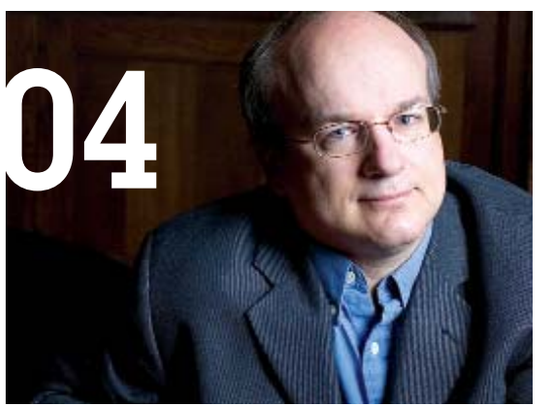
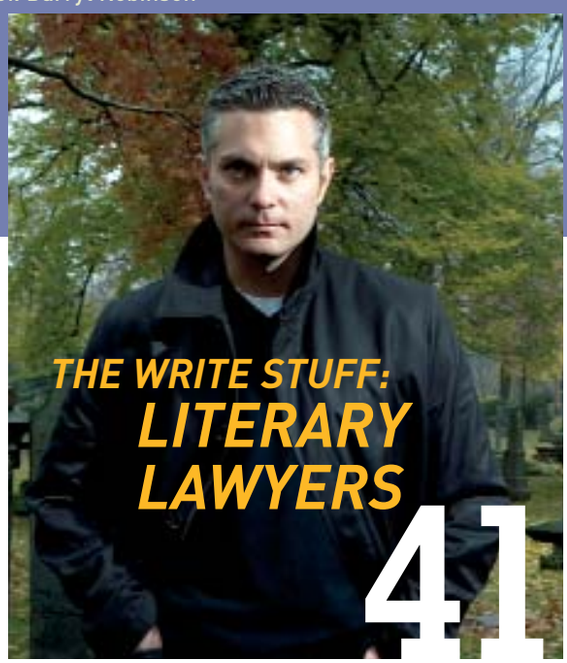
Global Citizenship

ON THE COVER

Law students Tara Doolan (left) and Jared Kelly (middle) traveled to Zimbabwe in the summer 2006, along with classmate Graeme Hamilton (not shown here), to offer legal assistance to Girl Child Network (GCN), a non-governmental organization in Zimbabwe that empowers and educates young girls, and physically rescues those who have fallen victim to sexual abuse. Pictured on the cover along with Tara and Jared are 11-year-old Margaret, who has been helped by GCN, along with her baby brother (in her arms), her two younger sisters, and a local police officer, who is involved with GCN. Their story appears on page 23.





UP FRONT

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FEATURES

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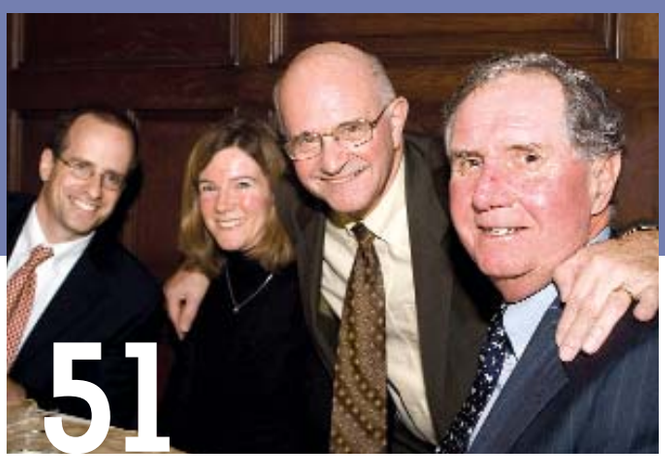
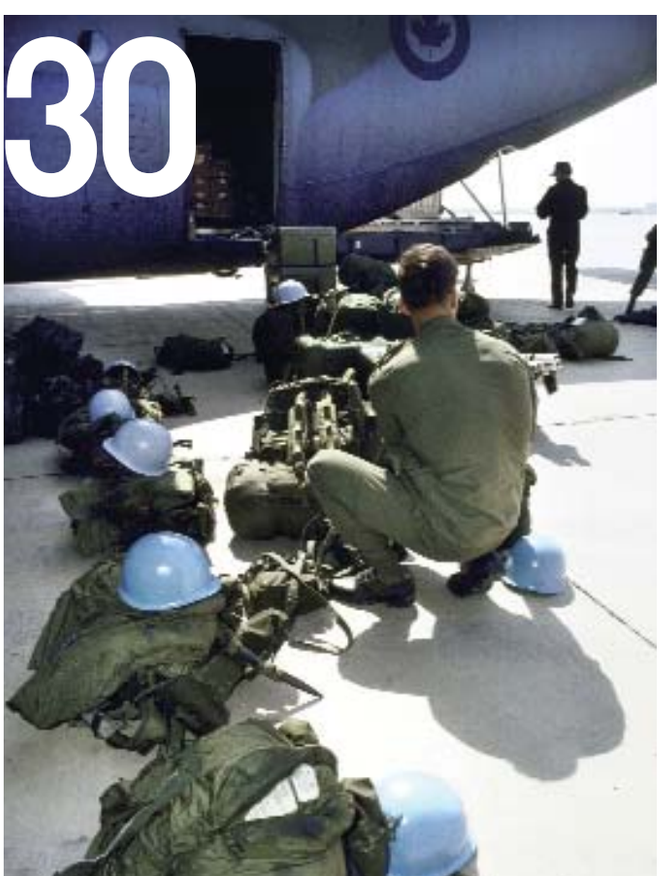
FROM THE EDITOR





The role our law school plays in the future of the legal profession, the country, and our new global society has never been clearer, or more important. Although the outside bricks and mortar still look very much the same (if a little more weathered), what goes on inside our walls has changed dramatically since I graduated from law school almost 15 years ago. New courses in technology, Islamic law, and gay rights that would have been unheard of two decades ago; an international human rights clinic that both supports and drives precedent-setting human rights litigation in far away countries including Sierra Leone, Romania, Uganda, Chile and Belize; a new health equity and law clinic that advocates for women's reproductive and sexual health rights in Canada and around the world; a unique partnership with the Toronto District School Board (LAWS) that targets at-risk youth and encourages them to stay in school; and important collaborations with leading international institutions that facilitate cross-cultural and comparative research – these are just some of the changes that have helped to make our law school even more responsive and relevant than it has ever been.

Over the past several years I have become keenly aware that the opportunities we provide students, and the legal minds that we help to shape as a result, can and will directly influence the future of our country and the world in which we live in a very tangible and positive way. Sometimes the influence is slow and steady. Consider for instance Professor Carol Rogerson, who has dedicated much of her time over the past two years to developing comprehensive spousal support guidelines which have now been made available to judges across Canada to assist them in deciding cases in a fair and principled way (see her notes on this project in our new section called "Policy Briefs" beginning at page 8). Other times the changes are dramatic and felt more immediately. One of those moments occurred this past November with a group of students collaborating to produce a 30-minute documentary film about the harsh and shocking reality of child sexual abuse, rape and forced marriage in Zimbabwe. Their project raised over $15,000 for a grassroots community organization in that country that literally plucks young girls from dangerous situations (often their own homes) and offers them a safe haven and hope for the future. More than the money that was raised, the students' initiative also helped to raise awareness of where our support is still desperately needed in developing countries. Their story, featured on the cover of this issue of *Nexus,* and the stories of several other students making a difference around the world, are found in the Focus section on "Global Citizenship" starting at page 19.

And it is not only our faculty and students who are playing an important role in addressing the challenges of our new global society. The law school is also blessed with many dedicated alumni who have gone on to make meaningful contributions both nationally and internationally. We write about one such recent alumnus, Salman Haq '03, in a new upfront section called "Catching Up With" (page 5). We are very fortunate to have another more seasoned alumnus – the Hon Bill Graham '64, former Minster of Foreign Affairs (2002 to 2004), Minister of National Defence (2004 to 2006), and Interim Leader of the Official Opposition (Feb 2006 toDec 2006) – contributing the Last Word to this issue (page 64). Mr. Graham writes that with the rapid globalization that has taken place since the 1960s and the increasingly interdependent world in which we live, our law school has kept pace, changing with the times, providing new and important perspectives. He says it succinctly when he notes that, today "our view and our capacity as a Faculty, is truly global." ■

JANE KIDNER ('92)
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LETTERS TO THE EDITOR

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.

Reading the Spring/Summer 2006 edition of *Nexus* was like a trip down memory lane for me, starting on page 8 with Barbara Storey's letter about her sister, Joyce McClennan. I was in the class of 5T2 and remember Joyce fondly. She was perhaps the only person at 45 St. George Street in the fall of 1949 who knew what was going on, when, where and who was supposed to be in charge. More important, she was much more approachable than either Caesar Wright or Bora Laskin. Seeing the photos of Anna (Bacon) Ker, Rosie Abella and Lorraine Weinrib on page 60 brought back many happy memories. Anna appears again on page 77. Despite her excellent grades, Anna had a bad habit of leaving examinations an hour or more before the deadline. As she did, she would invariably turn and smirk at her sweating classmates left behind. Paul Morrison and Joe Colangelo who appear on page 88 are friends and associates with whom I have been pleasantly involved from time to time. Harry Sutherland on page 93 was a classmate at law school. I hadn't seen him for many years but I used to get full reports on him every December when I skied with the manager of his condo building. Thank you for a very timely reminder.

THE HON. MAC AUSTIN ('52)
Former Justice, Court of Appeal for Ontario

I read the Spring/Summer edition of *Nexus* this afternoon while eating lunch. It is genuinely superb – entertaining, thought-provoking, and beautifully designed. Congratulations! Now the activist in me emerges. I firmly believe that U of T Law School is head and shoulders above the rest in Canada as a place for learning and academic exploration. But how does the Law School and more pointedly *Nexus* stack up environmentally? What proportion of the paper *Nexus* is printed on is post-consumer recycled content? Does *Nexus* use vegetable based inks? Is the plastic wrap biodegradeable? Is there an on-line version so that subscribers can opt for an electronic, paperless version?

DAVID R. BOYD ('89)
Trudeau Scholar, University of British Columbia

FROM THE EDITOR: *The paper stock used for Nexus is from Indonesia and while it contains no post consumer waste, it is 100% recyclable. Recycling is made possible through the use of vegetable inks. There is also an on-line version of Nexus as a PDF and we are in the process of developing an html version of "highlights" to increase our circulation and keep print costs down.*

I want to tell you how much I enjoyed reading the articles in the Spring Summer issue of *Nexus* – the issue dedicated to women. For the first time in many years, I felt a real connection to the law school again! The articles which impacted me most were those by Profs. Nedelsky and Cossman. I have been at home with my kids (8, 5 and 5 months) since 1998 and so have felt quite distanced from the practice of law. I have only recently discovered the career for me – professional coaching. I am interested in how I could work to combine the two disciplines and as my baby gets older I plan to explore that question further. Thank you for doing such a fabulous job of editing *Nexus* – it really made a positive impact on me.

MILISA BURNS ('91)

While putting the latest edition of *Nexus* in my briefcase to take home I decided to take a quick peak which ended up taking a few hours. This edition was a real page turner. What a great read! Not sure why there were so many Class Notes from the Class of 1970 but needless to say the update was an enjoyable ending. I am already looking forward to the next edition. Well done!

DAVID H. FIELD Q.C. ('70)
Managing Partner – Calgary, Fasken Martineau DuMoulin LLP

One Sunday, I spent a day running around with the kids and then after a family dinner decided to go to work in order to get "on top" of everything. When I got home at midnight everyone was asleep and I decided to relax by doing some reading. I pulled out Nexus and I was shocked. It was really interesting. Not only did it include stories about a lot of women that I think are terrific - the articles concerning women, work and mothering were engaging. In particular, Professor Jennifer Nedelsky's article about middle-class isolation and mothering was thought provoking. I was struck by the comment: "As I juggle my competing demands, I cannot find the time for such regular, informal exchanges [between mothers]." A lot of us in the profession struggle with that problem. Right now, I am currently working on developing workshops to facilitate exchanges of information and advice between working parents.

MARY E. JACKSON ('92)
Director of Legal Personnel, Blake, Cassels & Graydon LLP

I and many other African-Canadian alumni of the U of T Law School were dissapointed to see *Nexus* refer to Ivy Lawrence Maynier (Class of 1945) as "first woman of colour to graduate from the U of T Law School" *(Nexus Spring/Summer 2006)*. Ms. Maynier was an African-Canadian. The expression "man/woman of colour" is demeaning to people of the African race. It is perhaps even more color-biased and its origin was just as bigoted. Ivy was not a "colour"; she was an African-Canadian. Please issue an apology and correction in your next issue to "the first African Canadian to graduate from the U of T Law School".

DR. ALEXANDER J. ADYEINKA
Vice President, Regulatory, Rogers Communications

FROM THE EDITOR: *Thank you for taking the time to write to us about this important issue. Terminology in this area has undergone considerable flux, and will no doubt continue to evolve as society becomes more aware of how to best reflect difference and diversity in language. Currently, the term "person of colour" is used by equity-seeking communities as an inclusive way to refer to people from a range of racialized communities. As a faculty, we make every effort to be attentive to the nuances of language in all that we do. In this particular case, our historical research indicated that Ms. Maynier was born in Montreal on April 23, 1921 of Trinidadian parents. She grew up in Montreal, however in her adult life her ties to Trinidad continued when she practiced law there for several years in the late 1940s before marrying a career diplomat and moving to Jamaica in 1961. We regret any unintentional offence we may have caused as a result of our choice of language.*

CATCHING UP WITH...

SALMAN HAQ '03

Only three years out from graduation, Salman Haq has packed a lot of international experience into his legal 'briefcase,' so to speak. So much so that his original plans, and a brief stint as a downtown-Toronto litigator, have been replaced by very different goals.

Salman has just been recruited to the position of Research and Project Advisor for the Canadian Bar Association (CBA). His portfolio, though, is global in scope, through CBA's International Development Program (IDP). Since 1990, the IDP has worked in 29 countries across Asia, Africa, Central Europe and the Caribbean that are at transitional or early stages of legal and judicial reform. The majority of IDP's projects are funded by the Canadian International Development Agency (CIDA).

"This is a very new field—legal and judicial reform and capacity-building support for justice systems around the world," says Salman. "It has only taken off in the past 15 years, since the collapse of the former Soviet Union." Salman's role is not project specific, but he is focused on results. Much of his analysis, consultation and writing will gauge the readiness and capacity of legal and judicial systems to fulfill independent, democratic mandates. His research will feed into CBA decisions on how best to help.

It was Salman's recent work in Serbia that pointed him in this new direction. While posted in Belgrade through the Organization for Security and Co-operation in Europe (OSCE), Salman did legal analysis, drafted contracts and managed projects that assisted municipal governments in situations where, often, the first-ever elected officials were in place and new laws on local self-government had to be implemented.

Salman also points to his experience in law school as a research assistant for Professor Michael Trebilcock, a leader in international law, as influential in his career path. "That work initially piqued my interest in the whole law and development field," he says.

Now, having joined the CBA and the International Development Program, Salman gives two other examples, in China, of the kind of IDP work he will get involved in in the future. Through professional training, exchanges and research on professional organization and regulation, IDP has helped the All Chinese Lawyers' Association (ACLA), that country's bar association, move from its members being appointed by government, to ACLA's being recognized as representing the legal profession in China independent of government.

The IDP has also been working with China since 2003 on criminal-justice reform, at the request of the ACLA. Legal reforms introduced in the 1996 amendments to China's Criminal Procedure Law are the catalyst for the IDP's support for capacity-building among Chinese criminal lawyers. Ultimately, Salman will also be accountable for evaluating the results of CIDA-funded reform projects around the globe, and for assessing the success of projects funded by other agencies.

"Many of these international reform projects begin with baby steps – they have to," adds Salman. "And the projects have to be sustained both locally, through political will, and internationally, through funding. This is the kind of very practical research I want to be doing. I'm in on the ground floor." ■

By Lisa E. Boyes

FROM OUR ARCHIVES

75 YEARS AGO

IN 1931

Jackie Mitchell became the first female in professional baseball playing on an all-male team, striking out New York Yankees' Babe Ruth and Lou Gehrig during an exhibition game in front of 4,000 fans. Spain legalized divorce, three decades ahead of Canada. And the first Dracula movie starring Bela Lugosi was released. Back at the Law School, students enrolled in the law program within the Faculty of Arts and Science took their courses in Cumberland House on St. George Street. W. P. M. Kennedy was Chairman of the department, Jacob Finkelman was one of the professors and Bora Laskin was a young student. Six students graduated that year: George C. Ferrier, John D. Harrison, Donald A. Keith, William S. Sewell and Philip H. Francis.

50 YEARS AGO

IN 1956

Britain relinquished control of the Suez Canal to Egypt after 72 years of possession. Golda Meir became Foreign Minister of Israel, and American Academy Award-winning actress Grace Kelly married Prince Rainier III of Monaco. Back at the Law School, negotiations were underway with the Law Society of Upper Canada to obtain equal treatment for U of T's LL.B. students. It would be another two years before the Law Society finally agreed to give credit to U of T law graduates seeking admission to the Ontario Bar. Cecil Wright was Dean and the faculty body was comprised of eight male professors. Of the 23 graduating students that year, only one was a woman – Ann Mary Cooling. The LL.M. program had just five students.

25 YEARS AGO

IN 1981

Francois Mitterrand was elected President of France and Ronald Reagan became president of the United States. Britain's Prince Charles married Lady Diana Spencer in the first wedding ceremony to be televised live and watched by millions of people around the world. Back at the Law School, the Hon. Frank Iacobucci was Dean, there were 31 faculty members, only one of whom was a woman (Katherine Swinton) and 34% of the graduating class were women (50 out of 149). Among his many initiatives that year, Dean Iacobucci decided to help strengthen ties with alumni by starting the law school's first alumni magazine, *Nexus,* with its first editor, Anne Wilson '75.

KENT ROACH

AN INQUIRING MIND

If Kent Roach '87 has anything to say about it, public inquiries and royal commissions, the butt of many a Canadian joke, will have their day in court.

In fact, if there's an appellation that fits this calm, intellectually incisive law professor, it could be "Mr. Public Inquiry." Kent, who holds the Faculty's Prichard-Wilson Chair in Law and Public Policy, has participated in or led research teams on a host of Canadian inquiries from Guy Paul Morin, to Robert Driskell, to Dudley George and Ipperwash, to Maher Arar, to the Air India tragedy.

That is the considerable bad news – the injustices done and in need of serious retroactive correction. A piece of good news, however, is the way in which Canada has 'outed' itself in terms of its own record. "Every country is guilty of wrongful convictions," says Kent. "But Canada is now the global model in terms of taking seriously why they happen and how we can fix what went wrong."

Ilustrating his point, Kent cites a recent video-conferenced law class with a colleague in Singapore on the Arar inquiry: "They are totally up to speed with what's going on in Canada. The results of phase one (which, in September 2006, completely exonerated Maher Arar of any ties to terrorism) were also on the front page of *The New York Times* the day the report came out."

When asked how he got "to here" – for instance, to his current role as research director in legal studies for the Air India inquiry – from "there," from his childhood, Kent laughs. "As a little boy I remember wanting to be an RCMP officer," he says without a hint of irony, "and being desperately worried that I wasn't going to hit six feet (the height requirement at the time). My fears were well founded. When I enter RCMP headquarters now as a policy researcher and advisor for either the Arar or Air India commissions, I know it's as close as I'm going to get to the uniform!"

There are other inspirations for a man committed to civic duty, among them Kent's father, whose public service focused on the regulation of financial institutions; colleague Professor Marty Friedland; and Kent's undergraduate political science professor at U of T, now Professor Emeritus Peter Russell, who encouraged Kent as he prepared his thesis on the Mcdonald Commission on RCMP wrongdoing. Kent also cites Supreme Court of Canada Justice Rosalie Abella's appointing him as project director, in 1992, of the Ontario Law Reform Commission's report on the state of public inquiries.

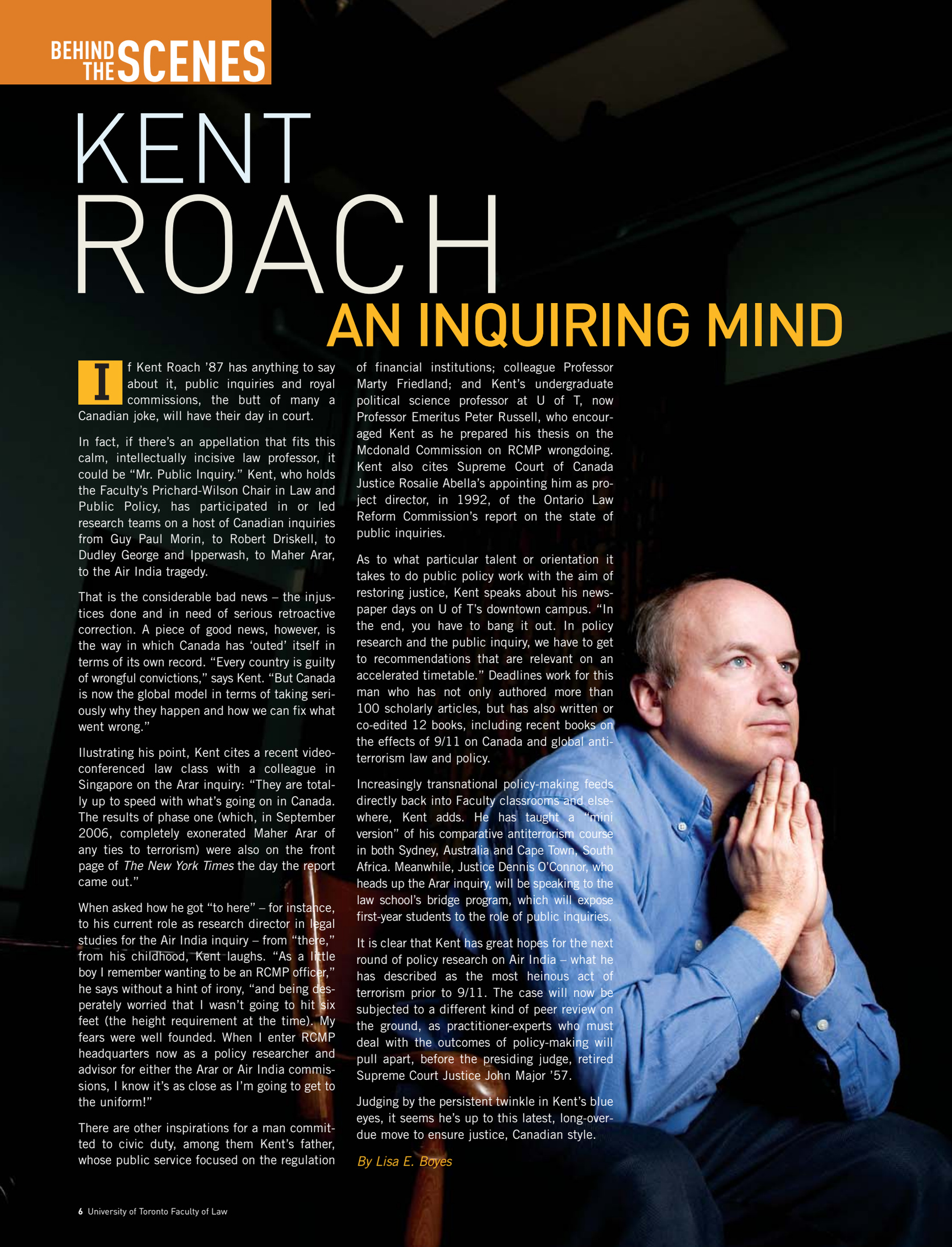
As to what particular talent or orientation it takes to do public policy work with the aim of restoring justice, Kent speaks about his newspaper days on U of T's downtown campus. "In the end, you have to bang it out. In policy research and the public inquiry, we have to get to recommendations that are relevant on an accelerated timetable." Deadlines work for this man who has not only authored more than 100 scholarly articles, but has also written or co-edited 12 books, including recent books on the effects of 9/11 on Canada and global anti-terrorism law and policy.

Increasingly transnational policy-making feeds directly back into Faculty classrooms and elsewhere, Kent adds. He has taught a "mini version" of his comparative antiterrorism course in both Sydney, Australia and Cape Town, South Africa. Meanwhile, Justice Dennis O'Connor, who heads up the Arar inquiry, will be speaking to the law school's bridge program, which will expose first-year students to the role of public inquiries.

It is clear that Kent has great hopes for the next round of policy research on Air India – what he has described as the most heinous act of terrorism prior to 9/11. The case will now be subjected to a different kind of peer review on the ground, as practitioner-experts who must deal with the outcomes of policy-making will pull apart, before the presiding judge, retired Supreme Court Justice John Major '57.

Judging by the persistent twinkle in Kent's blue eyes, it seems he's up to this latest, long-overdue move to ensure justice, Canadian style.

By Lisa E. Boyes



"Spousal support is something payers don't want to pay and it's a lot of trouble to seek. You have to be willing to fight. It's often the first thing to be taken off the bargaining table. However, that's to the financial detriment of women who are leaving marriages and entitled to it as part of the equitable distribution of the economic consequences of the marriage. (…) Some women find it degrading to collect spousal support, but they shouldn't."

PROF. CAROL ROGERSON, an expert in constitutional and family law, as quoted on CBC News. The June 30 story "No fault? No way!" examined the Supreme Court ruling on the *Leskun* spousal support case.

"The Court Challenges Program played a role in many of the landmark language and equality rights cases that now shape those areas of Canadian law and define Canadian values of fairness and justice. It has served as a national springboard for scholarship, debate, education and dialogue about language and equality rights (…). Our constitutional debates and our democratic principles are weakened when the voices supported by programs such as these are silenced."

PROF. LORNE SOSSIN, an expert in constitutional law, writing in the *Toronto Star.* The September 28 commentary "An axe that harms democracy" examined the cancellation of the Court Challenges Program.

"Adultery is back. It's not that it ever really went away. But, in the aftermath of the no-fault divorce revolution, it faded from legal relevance. Folks got married, (…) had affairs, got divorced and remarried. Adultery was no longer an irredeemable sin but a step on the road to serial monogamy. In recent years, anxiety over adultery is making a comeback. From self help books to Dr. Phil shows, Hollywood movies to television serials, popular culture is filled with morality tales about the costs of infidelity. The message is a simple one: don't do it."

PROF. BRENDA COSSMAN, an expert in family law, freedom of expression, feminist legal theory and law and sexuality, writing in the *National Post.* The June 24 commentary "Cheaters beware" examined the resurgence of adultery in family law.

"There is a desire in Canada to see ourselves as very different from the United States. Whatever we are, we are not the United States. We're not a priority target the way the United States is, but that doesn't mean we are protected. Canadians imagine that the world perceives them as somehow nicer than the United States. (…) No country should be smug enough to think it's immune [to terrorist attacks]. Canadians are a bit complacent, because we're so focused on identifying ourselves in contrast to Americans. It suddenly struck home that Canada appeared to be at risk of its own home-grown terrorism — not in the United States or England, not in Spain or Indonesia, but in downtown Toronto or Ottawa."

PROF. AUDREY MACKLIN, an expert in citizenship, immigration and refugee law, as quoted in the *LA Times, Financial Times, Seattle Times, Christian Science Monitor,* and *Reuters.* The June 6-8 articles examined Canada's attitude that nothing can disturb its multicultural society in the aftermath of the alleged Muslim threat to bomb Parliament and other key institutions, and behead the prime minister.

"There is a growing hostility towards expert evidence. I think there is a sense in the courts that expert evidence has proliferated too much. Expert testimony lengthens and complicates trials, and makes them far more expensive. (…) Strict rules are necessary, because of the exceptional nature of expert testimony: It is the only time that opinions are allowed to be expressed and taken into account at a trial."

PROF. MICHAEL CODE, an expert in criminal law, as quoted in *The Globe and Mail.* The November 29 article "The case against expert witnesses" examined the role of expert testimonial in court.

"These are extremely important cases. To deport someone is one of the most significant things a state can do. To deport them to face possible torture is momentous. (…) The court has to send a signal that if Parliament wants to indeterminately detain people it has to clearly state that as its intent."

PROF. KENT ROACH, an expert in anti-terrorism law and policy, as quoted in *The Globe and Mail.* The June 13 article "Rights of detainees go before top court," examined the clash in the Supreme Court of Canada between national security and the rights of terrorism detainees.

POLICY BRIEFS

Faculty members at U of T Law School are at the epicentre of provincial, federal and international policy-making in Canada. Their role includes research, advisory and investigatory work for high profile public inquiries and commissions on serious issues of public concern and relevance to the country. The following include brief highlights of their policy work over the past year.

PROF. ANITA ANAND was asked by the Task Force to Modernize Securities Regulation in Canada, a committee of the Investment Dealers' Association of Canada, to conduct research into the issue of the balance between issuers and investors in securities regulation. This August, she submitted her findings to the Task Force, and in October, the full Report of the Task Force was issued. Anita is currently completing research on terrorist financing for the Air India Inquiry. Her research examines *Criminal Code* provisions dealing with the financing of terrorist activities as well as the *Proceeds of Crime Act.*

PROF. LISA AUSTIN (along with Frédéric Pelletier of the University of Montreal's Centre de recherche en droit public) was retained in 2005 by the Judges Technology Advisory Committee (JTAC), an advisory committee to the Canadian Judicial Council, to examine and synthesize responses to the issue of whether public electronic access to court records raises privacy concerns that are not present in the traditional context of access. Lisa and Frédéric were also enlisted to draft a model policy on access to court records, under the direction of a JTAC subcommittee. Their two documents: "Synthesis of the Comments on JTAC's Discussion Paper on Open Courts, Electronic Access to Court Records, and Privacy" and "Model Policy for Access to Court Records in Canada," which were approved of by the CJC in September 2005, are available at: www.cjc-ccm.gc.ca.

PROF. ALAN BRUDNER appeared as a witness, in June 2005, before the House of Commons Committee on the Bill to allow marriages between persons of the same sex. In August 2005, he was consulted by the Department of Justice on possible amendments to the Youth Justice Act that would clearly set out the principles for sentencing young offenders.

PROF. MICHAEL CODE has been heavily involved in a number of important government commissions and inquiries over the past year. He was Commission Counsel to the *Driskell Inquiry,* which was established in late 2005 by the Manitoba Government with the mandate to inquire into a 1991 murder trial which resulted in the conviction and life sentence of James Driskell. The conviction was set aside by the federal Minister of Justice in 2003 on the basis that there had likely been a miscarriage of justice. An Inquiry was struck (led by Former Ontario Chief Justice Patrick LeSage, Q.C.) to investigate and report on the conduct of the Crown and the police during the investigation, trial and appellate processes. This past spring, Michael assembled the documentary record and interviewed witnesses. He presented legal argument during six weeks of public hearings in the summer and completed final submissions in November. The Report was concluded at the end of 2006 and Michael intends to use it as a teaching tool for first year students in their upcoming "Bridge Week" on Public Inquiries. Along with Prof Sujit Choudhury, Michael also appeared in the Supreme Court of Canada on June 13 and 14, 2006, acting for two separate intervenors in three cases that challenge the constitutionality of Canada's security certificate legislation *(Charkaoui, Almrei* and *Harkat).* The *Immigration and Refugee Protection Act* (s.78) provides for secret hearings in the Federal Court to determine whether to remove certain foreign nationals and permanent residents on grounds that they are a threat to the security of Canada. The legislation allows the Government to call *ex parte* and *in camera* evidence before the Court, without the detainee's knowledge or participation, in order to prove the alleged threat. Sujit and Michael submitted argument that the legislation violates s. 7 of the Charter and that less restrictive but still workable alternatives are available. Michael has also been asked to act as an outside consultant to a joint "Major Case Management Committee" of the RCMP and the federal Crown. This committee is studying various large criminal organization and terrorism-related cases and trying to develop more effective and efficient models for prosecuting these extremely complex and lengthy cases.


ANAND


AUSTIN


BRUDNER


CHOUDHRY


CODE


COOK

PROF. SUJIT CHOUDHRY has participated on a pro bono basis over the past 18 months, in two major public policy projects. In the summer of 2005, Toronto City Council appointed Sujit to serve as a member of a three-person citizens' panel to review the roles and responsibilities of council and the mayor, in anticipation of the new City of Toronto Act, which will grant Toronto a range of new powers. Over the next several months, Sujit and other members of the panel met with members of the public, civic activists, and politicians. Their report recommended a major set of changes that would enable council to act in a long-term, city wide, integrated fashion to address the major social and economic challenges facing Toronto, and which would give the mayor the powers to steer the agenda of council. Their recommendations were adopted in modified form last summer. In June 2006, Sujit appeared as counsel for Human Rights Watch and the Faculty of Law's International Human Rights Clinic in the *Charkaoui, Harkat* and *Almrei* appeals before the Supreme Court of Canada. The issue in those cases is the constitutionality of the security certificate regime, which applies exclusively to non-citizens.

PROF. REBECCA COOK co-authored, along with alumnus Lisa M.Kelly '06, the report "Polygyny and Canada's Obligations under International Human Rights Law," released in September 2006 by the Canadian Department of Justice. Rebecca and Kelly detail the social, economic, and health harms associated with polygyny (the marriage of a man to multiple wives) – the only well-documented form of multiple marriage in Canada. Tracking these harms, they argue that states' legal recognition or tolerance of polygyny violates women's equality, health, and dignity rights protected by international human rights treaties. Stressing the legal distinction between religious belief and religious practice, they argue that Canada is internationally obligated, as a party to human rights treaties, to take appropriate measures to eliminate polygyny as an unacceptable form of discrimination against women. There has been extensive media coverage of the report, most notably because of ongoing concerns about rights violations against women and girls in the Bountiful, B.C. polygynous community as well as anecdotal evidence of the practice's emergence in other immigrant and religious communities.


DUFF


DUGGAN


EMON


FLOOD


FRIEDLAND


JOHNSTON


LEE

PROF. DAVID DUFF was retained by the U.S. District Attorney as an expert witness for the prosecution in the Conrad Black trial in Chicago, and asked to testify as to the tax treatment of various payments that were received by Conrad Black and various associates and related companies on the sale of various publications by Hollinger International. David has also been retained by the federal Department of Justice to write a report on the income tax concepts of acquisition and disposition of property, as these relate to civil law concepts in Quebec and common law concepts in other provinces, and to suggest possible amendments to the federal Income Tax Act. David has also been retained by the Air India Inquiry to write a report on terrorist funding and charitable organizations in Canada.

PROF. TONY DUGGAN serves on the Personal Property Security Law Committee of the Ontario Bar Association's Business Law Section. The committee worked in consultation with government representatives to develop a series of recommendations for reform of the Ontario Personal Property Security Act. The committee submitted a report to the Minister on April 28, 2006 and a bill was introduced into the Parliament on October 20, 2006 giving effect to the committee's recommendations. He was also invited by the Australian Commonwealth Attorney-General's Department to present a series of papers at a conference on Australian personal property security law reform held in Sydney in July 2006. He co-authored a background paper for the conference which has been published by the Attorney-General's Department and he wrote a second background paper which was distributed at the conference and has been posted on the Attorney-General's Department's website. With Prof. Jacob Ziegel and other legal academics, he co-authored a submission to the Standing Senate Committee on Banking, Trade and Commerce on proposed reforms to the Canadian bankruptcy and insolvency laws.

PROF. ANVER EMON has been working with domestic and international organizations to increase critical study of Islamic law, comparative law, and multiculturalism. Through the Faculty's LAWS (Law in Action Within Schools) program, Prof. Emon has been working with the Toronto District School Board to develop curriculum and teacher-capacity on issues of Islamic and comparative law for 10th grade law courses. In addition, he met with international delegates in Salzburg and a delegation from the Autonomous Region of Muslim Mindanao in the Philippines to discuss issues relating to Sharia law as applied in different socio-political contexts.

PROF. COLLEEN FLOOD was recently appointed to the directorship of the Canadian Institutes of Health Research, Institute of Health Services and Policy Research. In her capacity as Scientific Director, she designs the research competitions for scholars in health services and policy research, supporting researchers and trainees in universities, teaching hospitals, and research institutes across Canada. As well, Colleen has been actively seeking and establishing partnerships with research hospitals and government. She is also a holder of a Canada Research Chair in Health Law and Policy, and in this role, Colleen is working with the Ontario Ministry of Health and Long-Term Care to synthesize evidence of the impacts of a two-tier health system on health care. She is also working with the Government of Ontario to explore various financing options for the Canadian health system, in particular examining progressive models of funding health care in the European context.

PROF. MARTIN FRIEDLAND has played a significant role in a number of important government commissions and inquiries over the past four decades including ones on securities regulation, legal aid, gun control, national security, and judicial independence and accountablility. Through his writings he has made valuable contributions to the Canadian legal system and the administration of justice. Most recently, he was a special advisor for the Maher Arar Commission's policy review; he conducted an inquiry for the Canadian Judicial Council into a complaint concerning a judge's conduct; he is a public director of the board and chair of the governance committee of the Mutual Fund Dealers Association of Canada; he is a member of the board of the University of Toronto Press and chairs its manuscript review committee; and he is conducting a study for the Canadian collective Access Copyright on issues relating to the distribution of royalties.

PROF. DARLENE JOHNSTON is passionately committed to the protection of fishing and land rights and preserving the cultural heritage of her ancestors. Between 1991 and 2001, she coordinated land claims research and litigation for the Chippewas of Nawash First Nation. Her advocacy contributed to the judicial recognition of her people's treaty right to the commercial fishery and to the recovery and protection of burial grounds and other culturally significant sites within their traditional territory. More recently in 2006, she was asked to serve as an expert witness in judicial hearings and applications. In October, she was an expert on a judicial review application challenging sufficiency of consultation with respect to protection of Aboriginal heritage in the context of a class environmental assessment. In July, she was an expert witness in an OMB hearing concerning protection of Aboriginal burial grounds from development. Darlene also continues her work as a member of the Research Advisory Committee for Part II of the Ipperwash Inquiry; she is a member of the Auditor General's Advisory Panel on First Nations Issues; a member of the Auditor General's Review of the B.C. Treaty Process; and a member of the Aboriginal Working Group of the Equity and Aboriginal Issues Committee, Law Society of Upper Canada. Over the past year, Darlene has also worked closely with the Faculty's International Human Rights Clinic, making several trips to Belize with students, IHRP Director, Noah Novogrodsky, and lawyers Paul Schabas and Leena Grover (Blake, Cassels & Graydon LLP) in efforts to help protect Maya land rights in Belize.

PROF. IAN LEE was invited by the European Policy Forum to present a written submission to the European Commission and participate in a roundtable on the issue of one-share, one-vote. The roundtable, held in Brussels in June 2006, related to the European Commission's broader consultation on company law reform launched in 2005, and its "Action Plan on Modernizing Company Law and Corporate Governance in the European Union." The matter remains under consideration by the Commission.

CHECK OUT OUR FACULTY BLOG

For the most up-to-date faculty commentary and analysis of current legal affairs – from three different views on income trust reform, to whether adultery has made its way back into family law – log onto our new faculty blog. We invite you to log on and join the commentary at **http://utorontolaw.typepad.com/ .**


LEMMENS


MACINTOSH


MACKLIN


ROACH


ROBINSON


ROGERSON


SOSSIN


TREBILCOCK

NOTABLE

Prof. Anita Anand received an award in September for Best Paper in Managerial Finance by the Northern Finance Association. The article, "Voluntary Adoption of Corporate Governance Mechanisms" was co-authored with Professors Frank Milne and Lynnette Purda (both of Queen's University). **Prof. Nehal Bhuta** has been invited as a designated speaker on the topic of occupation law to a major international conference in Jerusalem organized by the ICRC and the Hebrew University. **DLS Clinic Lawyer, Amina Sherazee,** is the recipient of an Award of Excellence from the Canadian Association of Black Lawyers. In the past Amina, has acted as legal counsel to the Canadian Arab Federation, the Canadian Council of Muslim Women and the Muslim Canadian Congress. **Professors Ayelet Shachar** and **Ran Hirschl** were recently awarded Canada Research Chairs in Law, and Political Science, respectively. **Prof. Sujit Choudhry** was appointed to the Board of Legal Aid Ontario.

PROF. TRUDO LEMMENS was appointed as a member of the Advisory Committee on Health Research of the Pan American Health Organization. The PAHO Advisory Committee on Health Research (ACHR) is composed of fifteen members who are selected among renowned scientists in the Region. It contributes to the formulation of policies and technical cooperation strategies of the PAHO with respect to research. The Committee reviews research activities that are undertaken and/or have the support of the Organization; monitors their development and evaluates the results. The Committee aims at contributing to PAHO's goal of promoting research that benefits the health of the population and that diminishes inequities in access to health care. It helps to promote, among other things, knowledge transfer, training of researchers, financing of research projects, development of research priorities and good interaction between researchers and policy makers.

PROF. JEFF MACINTOSH is currently a member of the federal government's Small Business Research Advisory Committee, which meets in Ottawa once a year to discuss current research focusing on small businesses, and to help the government plan its own research agenda.

PROF. AUDREY MACKLIN participated this past year in a G8 Expert Panel on Immigration and Integration that was convened in Lisbon. She was also an invited expert in a government of Canada Roundtable on Corporate Social Responsibility and the Extractive Sector Operating in Developing Countries.

PROF. KENT ROACH has had more than 15 years of involvement in major national and provincial public inquiries, beginning in 1992 when he was asked by Justice Rosalie Abella to be Research Director for the Ontario Law Reform Commission's Project on Public Inquiries. More recently, in 2005, Kent served on the Research Advisory Commission for the Ipperwash inquiry (along with Profs. Peter Russell of Political Science and Darlene Johnston of the Faculty of Law), and on the Arar Research Committee that advised Justice O'Connor with respect to his report on the review of the RCMP's national security activities. Currently Kent is Director of Research (Legal Studies) for the Air India Inquiry with Justice Major and lead counsel Mark Freiman, both alumni of the law school. Over the past year, Kent was also very involved with Prof. Michael Code in the Driskell inquiry in Manitoba. Kent finds innovative ways to bring his public inquiry expertise into the classroom, most recently connecting with a law class in Singapore to teach about the release of the Arar Report. In February, along with Lorne Sossin, Michael Code and Darlene Johnston, Kent will organize a first year "Bridge Class" on public inquiries. Kent's new book on *Global Anti-Terrorism Law and Policy* (co-edited with Victor and Michael Hor at Singapore) is featured in our New Faculty Books section.

Adjunct **PROF. DARRYL ROBINSON** recently participated in the International Criminal Court public hearings on prosecutorial strategy and policy. The goal of the hearings was to obtain input to refine the strategies and methods of the Prosecutor in the years to come. Robinson is also involved in ongoing conversations with the ICC Prosecutor about future linkages and work with the International Human Rights Clinic at the law school. As Director of the Clinic, Robinson has supervised the work of students in diverse international human rights cases. Since September, the Clinic has sent U of T law students to Uganda, Chile, Washington, Romania and Belize to carry out international advocacy work.

PROF. CAROL ROGERSON, along with Prof. Rollie Thompson of Dalhousie Law School, are co-directors of a research project funded by the federal Department of Justice to develop informal guidelines to bring more uniformity and predictability to the determination of spousal support under the *Divorce Act.* From the perspective of public policy development and law reform, the project is unusual in that it does not entail legislative reform. Rather it utilizes a methodology of informal law reform, or building the law "from the ground up." The goal of the project has been to develop a set of informal guidelines, reflecting dominant and emerging trends in current practice that will operate on a voluntary, advisory basis within the existing legislative framework. The first part of the project involved Profs. Rogerson and Thompson working with a 13 person advisory group set up by Justice Canada, composed of judges, lawyers and mediators from across the country with an expertise in family law, to develop a draft set of advisory guidelines. In January of 2005 the Department of Justice released their paper, "Support Advisory Guidelines: A Draft Proposal" (the "Draft Proposal"). The response to the Draft Proposal has been very positive. Over 50,000 copies of the document were downloaded from the Justice website in the year following its release and thousands of photocopies were distributed at various programs around the country. The Advisory Guidelines have been cited in close to 200 reported decisions from every province in Canada. The use of the Advisory Guidelines has been endorsed by both the British Columbia and New Brunswick Courts of Appeal. Lawyers now regularly use the Advisory Guidelines in discussions with clients and in negotiations with other lawyers. Mediators and judges use them to assist in settling spousal support issues. The project is now in its final phase of feedback and revision. Profs. Rogerson and Thomspon are now traveling across the country, meeting with groups of lawyers and judges to obtain focused feedback on the operation of the guidelines, with a view to issuing a revised version of the Advisory Guidelines in the fall of 2007.

PROF. LORNE SOSSIN is interested in the concept of independence in law. He has explored this interest in a number of public policy initiatives over the past year. He served as the Research Director to the Law Society of Upper Canada "Independence of the Bar and the Rule of Law" Task Force. The Task Force's Final Report was presented to Convocation in November of 2006. Sossin was commissioned by the Alberta Federation of Labour to write a report on the nature of independence in the context of administrative tribunals entitled "The Independent Board and the Legislative Process" in June of 2006. Finally, he was commissioned by the Gomery Inquiry to conduct research on bureaucratic independence which was published by the Inquiry as *Defining Boundaries: The Constitutional Argument for Bureaucratic Independence and Its Implication for the Accountability of the Public Service* in February of 2006.

PROF. MICHAEL TREBILCOCK was a Visiting Professor at Yale Law School from September to November 2005 where he taught a course on The Regulation of International Trade. Michael was also a Visiting Professor at the National University of Singapore Law School, from August to September 2006, and taught Law, Institutions and Development. He presented a paper at a national conference in Washington D.C. in January 2006, sponsored by the University of Pennsylvania, on national disasters, which was subsequently published in a collection of essays on this topic. He gave a paper at a symposium at the University of Virginia Law School in January 2006 on the role of contract enforcement in economic development (forthcoming in the *Virginia Law Review).*

FACULTY LAUNCHES FIRST-OF-ITS-KIND HEALTH CLINIC


Joanna Erdman

Inequalities in access to health services and resources is a serious social problem both within Canada and among different countries around the world. In response to this issue, the U of T Faculty of Law has taken a lead role in establishing the first Health Equity and Law Clinic in Canada, with an emphasis on reproductive and sexual health. Recent law graduate, Joanna Erdman, has been recruited to lead the Clinic as its first Executive Director. "The disparities in health services are not random," says Erdman. "They track socially defined hierarchies of wealth, gender, race, ethnicity, sexual orientation, age and disability – and for that reason are unjust." Erdman graduated from the Faculty in 2004 and went on to do her LL.M. at Harvard. Her research focuses on sex and gender discrimination in the regulation, structure, and financing of health care systems. In collaboration with domestic and international organizations, students in the clinic will have the opportunity to contribute research, analysis and advocacy support to projects that seek to ensure fair and effective access to reproductive and sexual health services. This year, students will work on projects addressing health care access in Ontario, Mexico, Brazil and South Africa. One of the clinic's first initiatives concerns the obligations of medical providers and governments to protect the free and informed decision-making of women living with HIV/AIDS. The Clinic will also offer its expertise on impermissible restrictions of adolescents' access to health services, and lack of transparency in service delivery. Over the long term, the clinic hopes to help develop a critical mass of legal professionals active in government, private practice, civil society, and education with the capacity and commitment to protect and promote more equitable access to health care. For more information about the clinic, e-mail Joanna Erdman at joanna.erdman@utoronto.ca.

U OF T LAW STUDENTS WORK WITH WORLD VISION ON CHILDREN'S RIGHTS

World Vision

A team of seven students from the Faculty's International Human Rights Program (IHRP) working group on children's rights has joined forces with World Vision to assist the international children's organization with legal research on the implementation of a "children's ombudsperson" in Canada. A children's ombudsman is an independent body that advances children's rights and will step in where the rights of a child have been violated. The students' research includes examination of various international jurisdictions (including Norway, Sweden and New Zealand) where a children's ombudsperson currently exists. Their findings were incorporated into World Vision's second set of submissions to the Senate Standing Committee on Human Rights and will be presented in early 2007 in Ottawa. The research helped to highlight important omissions in the Senate Standing Committee's interim report "Who's in Charge Here? Effective Implementation of Canada's International Obligations with Respect to the Rights of Children." The final report is scheduled for release in the Spring 2007. "Canada is seen throughout the world as a global leader in the realization of human rights," says Sarah Perkins, acting director of the IHRP at the Faculty of Law. "We are proud that U of T law students are working hard to ensure that Canada continues to lead by example by taking concrete steps towards fulfilling its obligations to respect and protect the rights of children."


Sarah Perkins ('04)


Grand Moot

(L-R): Justices Armstrong, Epstein, Abella, and Dean Mayo Moran

On Sept. 28, 2006 the annual Grand Moot was held in the newly-named Rosalie Silberman Abella Moot Court Room.

This year's team of highly accomplished student mooters included third-year students Rachel Kent, James Renihan, Chris Graham and Kim Haviv (president of SLS). A distinguished bench comprised of justices Rosalie Abella (Supreme Court of Canada), Robert Armstrong (Court of Appeal for Ontario) and Gloria Epstein (Ontario Superior Court of Justice) graced the stage and charmed a packed audience of students and faculty. Justice Abella praised the mooters for the quality of their arguments. While the court reserved decision, she added that the "future of our profession is in excellent hands" and that "again the University of Toronto law school has demonstrated why it is the greatest."


Prof. Giulio Silano

U OF T LAW SCHOOL LAUNCHES INNOVATIVE "LAW AND RELIGION" SERIES

In response to growing public awareness and interest in religion and its impact on modern society, the U of T Faculty of Law has launched a new lecture series, "Law, Religion and Society." The series hopes to provide opportunities for serious reflection on how religion impacts the way Canadian society deals with controversial issues including the education of children, freedom of expression, sexual conduct, and same-sex marriage. The first lecture of this year, "Gay Rights and Religious Expression: An Irreconcilable Conflict," was given by professors Jennifer Nedelsky (Law) and Giulio Silano (Dept. of Christianity and Culture), and featured a discussion about how society can move forward constructively in the face of religious differences around core values, and how our laws are drawn into those debates. The second session featured law professor, Anver Emon, an expert in Islamic law and legal history, who placed recent Islamic events in the context of Islamic legal history and the growing debate surrounding religious pluralism in liberal states. On Nov. 29, Professor Darlene Johnston, the first female Aboriginal law student and professor at the law school and a member of the Chippewas of Nawash First Nation, spoke passionately about aboriginal history and self-understanding and how they are conveyed across generations by stories and teachings that are grounded in particular landscapes. "All Creation stories are true. There is not one story that can be true for all peoples of the world," said Prof. Johnston. "Origin stories require the utmost respect." The Law, Religion and Society Lecture Series will continue in 2007.

STUDENTS LEARN ABOUT DIVERSITY IN THE PROFESSION

Individual career counseling and job search coaching provides some help for young lawyers seeking their dream job. But systemic barriers including racism, ableism, sexism and homophobia are often still getting in the way. That is the conclusion of a number of recent reports looking at issues of gender, diversity and retention in the legal profession. "One of the greatest challenges currently facing the legal profession is how to increase diversity within our ranks," says Dean Mayo Moran. "The question how to attract and retain members of equity-seeking communities has been the subject of many studies and working groups of law societies and organizations provincially and nationally." Moran believes passionately that law schools must also provide leadership on these issues – and she is taking action on the Faculty's behalf this year at U of T. With the help of two senior and dedicated alumni, Kirby Chown (Ontario Regional Managing Partner, McCarthy Tétrault) and Raj Anand (Partner, Weir Foulds), Moran has developed an intensive course for upper year students titled "Diversity and the Legal Profession: Models, Strategies and Ideals". The course instructors have already started holding consultations with members of the profession, judges and the Law Society on how we can collectively better address systemic barriers to practice. The course aims to explore the barriers equity-seeking groups encounter in the legal profession, as well as issues of work-life balance that many in the profession face. "Our goal is to give students an opportunity to undertake additional scholarly research that analyses these challenges and attempts to problem-solve," says Dean Mayo Moran. At then end of the course, students will present their written work to members of the profession, judiciary, legal academy and government at a special summit at the law school. It is expected that topics covered will include the factors affecting the retention of women, lawyers of colour, Aboriginal lawyers, lawyers with disabilities, GLBT lawyers and other members of equity-seeking groups; the conditions, policies or accommodations that would need to be in place for the legal profession to ensure equality in the workplace; how the structure of hiring and promotion (including the articling interview process, the articling experience and progression to partnership) impacts members of equity-seeking communities; the business case for law firms to hire members of equity-seeking communities; and the impact of workload issues, including such matters as billing targets, on retention. These and many other issues will be explored and researched more thoroughly throughout the year.

U of T law students selected from among thousands to take part in World HIV/AIDS Conference

This past year, seven U of T Law students were chosen to take part in the 16th International AIDS Conference featuring renowned keynote speaker and humanitarian, Stephen Lewis. The seven were selected from among more than 12,000 applicants from around the world to give "poster presentations" of their research at the conference, which took place in Toronto from August 13 to 18. The students – Claudia Brabazon, Melanie deWit, Michele Discepola, Darcy Gibbs, Jasmine Gill, Jennifer King, and Aadil Mangalji – submitted their research articles, which were written as part of an intensive course at the law school taught by Lewis, on topics ranging from access to essential medicines, to 100 per cent debt cancellation as a means of combating the pandemic in Africa. They were contacted in April 2006 and informed of the honour. "The course I took with Stephen Lewis was the highlight of my three years at U of T law school," said Darcy Gibbs, who is now articling with Goodman & Carr LLP. "My co-author, Jasmine Gill, and I found that many of the countries with high rates of HIV/AIDS infection also have extremely high debt loads with a large portion of the government budget allocated to servicing this debt. Our research sets out a framework for financing multilateral debt cancellation to allow these countries to redirect monies to health and education, which are extremely important in the fight against HIV/AIDS." The U of T Faculty of Law was also represented at the conference by international human rights scholar, Professor Rebecca Cook, along with Joanna Erdman, co-director of the law school's Program on Reproductive and Sexual Health Law. The pair conducted a skills-building workshop on Women, HIV/AIDS and Human Rights, with sessions in both English and Spanish.

First year students learn about legal ethics and professionalism

Justice Stephen Goudge ('68) of the Court of Appeal of Ontario

LAWYERS can encounter a variety of ethical dilemmas during the course of their professional lives. For young lawyers in particular, it can be challenging to know what to do when faced with these complex moral and ethical issues. For the past five years, first-year students at the law school have been exposed to thought-provoking questions about ethics and professionalism in their "Bridge Week" program. Coordinators of the academic program have included U of T law professors Michael Code, Trudo Lemmens, Kent Roach, and Lorne Sossin as well as Justices Goudge and Armstrong of the Court of Appeal for Ontario, Justices Harvison-Young and Lax of the Superior Court, and Justice Proulx of the Quebec Court of Appeal. Suitably, the first day of this year's bridge program was held at the Law Society's Convocation Hall where legal education in the province of Ontario began. The week continued with panels and small group discussions featuring various members of the judiciary, private practice and the academy. This year's lineup of distinguished speakers included Chief Justice Roy McMurtry, Dean Mayo Moran, Earl Cherniak, Neil Finkelstein, Edward Greenspan, Linda Rothstein, and Deputy Attorney General Murray Segal. "Through this bridge week, we hope that students will have the opportunity to explore the professional ideals that shape advocacy, the pursuit of justice and legal practice, as well as the ethical challenges which confront lawyers in various practice settings and how these challenges can be resolved," said Associate Dean Lorne Sossin. "Our aim is not to draw conclusions, but rather to give students opportunities to discuss the tensions and controversies that are shaping the legal profession today." By establishing frameworks for ethical decision-making, students were encouraged to think about their own personal moral code. "I thought it was a great opportunity to be exposed to different perspectives on the legal field," said student Kaley Pulfer. "In classes, we learn the basic rules of law but learning about different ethical views, dilemmas, and situations was a good opportunity to start thinking about my own ethical views. Ethics are vital in the legal profession, the way I conduct myself personally and professionally will impact my life and the lives of my clients."

Unique partnership between U of T law school and International Criminal Court a first in North America

This September, the U of T Law School's International Human Rights Clinic (IHRC) joined forces with the International Criminal Court (ICC), Office of the Prosecutor in The Hague, the Netherlands to help the international court address the most serious crimes of war crimes, crimes against humanity and genocide when national courts are unable or unwilling to do so. The unique partnership with U of T law students and professors marks the first time the ICC Office of the Prosecutor has sought advocacy and litigation assistance from any law school in relation to its cases. The ultimate goal of the Court is to help prevent or reduce the deaths and devastation caused by conflict. ICC Chief Prosecutor, Luis Moreno-Ocampo, says that the ICC Office of the Prosecutor is a small office that relies heavily on networks of legal support from a number of countries. "The mission of the ICC is to help establish the rule of law around the world," says Moreno-Ocampo. "To achieve that, we must rely heavily on legal research assistance, and we are thrilled that the new partnership with U of T students and faculty will now provide us with valuable advocacy support." U of T's human rights clinic opened its doors in 2003 and since that time has litigated a number of international human rights cases around the world.

Acting Director and Adjunct Professor Darryl Robinson, an international human rights lawyer, was formerly an adviser to the ICC Prosecutor and one of the architects of the ICC. Under his direction, students carry out research and prepare the necessary court documents to provide justice for victims of human rights violations. Cases have been heard in both Canadian courts and foreign courts, as well as at regional and UN treaty bodies and before international criminal tribunals. "We are incredibly fortunate to have Darryl Robinson with us this year directing the Clinic program," said Dean Mayo Moran. "His collaboration and work with the ICC has presented an amazing learning opportunity for our students to get involved in ongoing human rights work, and is consistent with Canada's longstanding support for bringing human rights violators to justice."

Adjunct Prof. Darryl Robinson


Mark Winfield

LAW SCHOOL DEBATES PROPOSED CLEAN-AIR ACT AND KYOTO PROTOCOL

What does the federal government's proposed Clean-Air Act (Bill C-30) mean for the environment, for industry and for Canada's climate change obligations under the Kyoto Protocol? All three opposition parties have opposed Bill C-30 in part because it contains no reference to the Kyoto emissions-cutting targets. In response to recent political maneuverings surrounding Bill C-30, the U of T Faculty of Law and the Environmental Law Club explored these controversial issues in a panel discussion on Nov 30, The Proposed Clean Air Act (Bill C-30): Made in Canada or Written in Washington? Laura Nemchin, Counsel at the Ontario Ministry of Environment, moderated the session, and panelists included law Prof. Jutta Brunnée, holder of the Metcalf Chair in Environmental Law; Mark Winfield, Pembina Institute for Appropriate Development, Calgary; and Bruce Orr, Director, Government & Public Affairs, Canadian Petroleum Products Institute. "Canada's response to environmental issues and climate change tops the list of Canadians' concerns," said Brunnée. "This issue is also central to the United Nations climate change conference currently underway in Nairobi." Highlights of the panel included a critique by Winfield on key features of Bill C-30's approach to air pollution, which he argued would introduce few, if any, regulatory measures that do not already exist under the current Canadian Environmental Protection Act. Bruce Orr emphasized the complexity of efforts to reduce Canada's greenhouse gas emissions, while Brunnée highlighted the extent to which the proposed approach falls short of requirements imposed by the Kyoto Protocol in order to address global warming. For more information about the panelists' response to Bill C-30 log onto Prof. Brunnée's web site at www.law.utoronto.ca.

Faculty hosts panel discussion on human rights reform

ON FRIDAY, NOVEMBER 17, 2006 well known human rights lawyers David Lepofsky (Crown lawyer and an outspoken advocate for disability rights in Ontario), Michael Gottheil (Chair, Ontario Human Rights Tribunal), and Kathy Laird (Executive Director of ACTO, a tenant's rights legal aid clinic), spoke at the U of T Faculty of Law on the legislation pending on human rights reform in Ontario: *Bill 107, the Human Rights Code Amendment Act, 2006.* The legislation proposes a new scheme for direct access to the Ontario Human Rights Tribunal, a new Human Rights Support Centre as a legal clinic for human rights complainants and a new focus for the Ontario Human Rights Commission on policy, education and systemic litigation. The McGuinty government has said that the proposed legislation would "modernize and strengthen Ontario's 40-year-old human rights system, so that it could resolve complaints faster and more effectively, while remaining focused on preventing discrimination." Critics have charged that removing the role of the Commission as the gatekeeper over human rights complaints and the advocate for the public interest in all human rights adjudication before the Tribunal will significantly erode human rights protections in the Province. Time will tell who is right. Bill 107 passed third reading on December 5, 2006 and received royal assent on December 20, 2006.


David Lepofksy


(L-R): Kathy Laird ('77) and Michael Gottheil

Students explore women's human rights issues

In an effort to foster academic community and to encourage law students to contribute to the scholarly literature on women's rights in Canada and around the world, this November, the Bora Laskin Law Library's Women's Human Rights Resources Program hosted a student symposium on women's human rights issues. The academic conference showcased student scholarship on women's rights law issues and provided a unique forum for law students to present their research in diverse and significant legal areas. Panelists included Kathryn Bird, Odette Henry, Susannah Howard, Lisa Kelly, Stella Luk, and Upasana Sharma. The topics addressed ranged from the neglected obligations towards the United Nation's Convention on the Elimination of All Forms of Discrimation Against Women, to domestic violence and abuse, to systemic discrimination, to live-in caregivers programs, to reforming Muslim personal laws in India.

(L-R): Nadya Melanson and Nicole Richmond ('06) from the Red Spirit Dance Troupe

Aboriginal students showcase Pow Wow and Fall Feast for law school

The Rowell Room was full to capacity once again this year, as the Aboriginal Law Students Association (ALSA) held its second annual Pow Wow and Fall Feast. The modern Pow Wow is an opportunity for Aboriginal and non-Aboriginal people to gather to dance, sing, eat, and socialize, and an important tradition in Métis culture that typically celebrates a successful moose harvest or Louis Riel Day on Nov. 16. Elder, Grafton Antone, opened the ceremony by inviting everyone to take part in the smudge, a Native American tradition that involves the burning of herbs for emotional, psychic, and spiritual purification as a kind of "spiritual house cleaning." The smell of sage smoke and sounds of the drum and song of the Red Spirit Singers filled the room as recent alumna Nicole Richmond ('06) and other dancers performed for the crowd. The feast included traditional fare prepared by ALSA members including smoked salmon, partridge à l'orange, moose stew, bannock, wild rice casserole, baked squash, and raspberry salad. The annual law school event aims to build connections with the wider student body at the law school and others at the university. Attendees included the president of U of T's Native Students' Association, John Crouch, as well as other Aboriginal U of T students from First Nations House. *(with files from second year law student Austin Acton)*

Prof. Susan Silbey

MIT EXPERT VISITS LAW SCHOOL

More and more, everyday social transactions occur through new organizational forms, intelligent machines, distant connections, and virtual worlds. On October 17, 2006, Susan Silbey, Professor of Sociology and Anthropology at the Massachusetts Institute of Technology visited the law school to deliver the 10th annual John Edwards Memorial Lecture: Governing Green Laboratories – Trust and Surveillance in the Cultures of Science. By observing the conditions and possibilities of collaboration between science, engineering, and law, Silbey illustrated how the scientific laboratory has the potential to serve as a social laboratory for more rational and successful legal regulation in other environments. The analysis of patterns of governance, trust and surveillance in an open university setting enabled Prof. Silbey to overcome the barriers to in-depth cultural analysis of regulatory compliance that are often erected in corporate settings. "This is important not only because of the increasing significance of scientific and educational institutions in our current economy," says Silbey, "but also because research institutions serve as models for emerging organizational forms, which depend on innovation, flexibility and large knowledge bases, precisely the types of organizations that have both invented and typified our contemporary social worlds."

Summer Mentorship Program hosts first annual reunion for alumni

This November the Faculty's Office of Admissions hosted its first ever reunion for past and current participants of the Summer Mentorship Program. The program, which has been running since 1994 as a partnership between the Faculty of Law and five district school boards in the Toronto area, brings high school students from under-represented communities to the law school during the summer to enjoy a university experience, obtain mentoring, and explore programs and professional opportunities for their futures. Faculty, alumni, students, family and friends gathered to celebrate the program's success including its expansion from 20 student participants when the program first commenced, to 40 today. Second-year law student, Shawn Richard, who coordinated the program in 2006, said, "We thought the reunion was an important way to reconnect and see how students have progressed since the inception of the program." The original goal of the program was to address the lack of Black and Aboriginal students in professional faculties at the University of Toronto. Since its inception, the majority of students who participated in the summer program have gone on to attend university, and four have graduated from the U of T Faculty of Law.

Anne Carbert ('99)

Recent law grads benefit from expansion of Faculty's career services office

This past summer, the Career Development Office hired law grad, Anne Carbert '99, to fill its newly created part-time position, Career Advisor, Professional Diversity & Legal Opportunities, that will target the needs of recent law grads. Previously, Anne worked for the Women's Human Rights Resources at the Bora Laskin Law Library, and she is currently pursuing graduate studies in counseling psychology. The new position is expected to respond to the growing concerns that recent law graduates continue to face barriers to securing meaningful employment early on in their careers, particularly women and other individuals from diverse communities. Thanks to funding from the Law Foundation of Ontario for a three year term, the CDO has been able to enhance individual career services, dedicated resources and programs for new lawyers experiencing difficulty in the job market. The CDO also plans to work closely with foreign-trained lawyers who have to navigate both the re-qualification process through the National Committee on Accreditation (NCA) and the Bar admission process, and often have the most difficulty securing articling positions. "Women and members of equity-seeking groups continue to slip through the cracks within their first five years of call," says Assistant Dean, Career Services, Lianne Krakauer. "It was time to take a proactive approach to find ways to better support these individuals in making their early career transitions." In the spring of 2007, the CDO will propose options for future phases of this project and will work with partners to extend career development services to new lawyers and foreign-trained lawyers beyond those connected to the U of T Faculty of Law. The Advisor is available to meet with recent graduates of UT Law (graduating years 2003 to 2006) and with foreign-trained lawyers enrolled in courses at the Faculty. To access career services or to offer feedback, please contact Anne Carbert at career.law@utoronto.ca or 416-978-5689. One-on-one career counselling appointments will be available in person for those in Toronto and by phone for alumni outside of Toronto. Alumni who graduated prior to 2003 and would like to access CDO resources and services, should contact Lianne Krakauer, Assistant Dean, Career Services, at 416-946-3033 or l.krakauer@utoronto.ca

Reunion 2006
kicks off with inaugural lifelong learning day

(L-R): Austin Wong ('96) and Christina Caldarelli ('96)

(L-R): Victor Goldberg ('76), Elizabeth McIntyre ('76) and David Baskin ('76)

This past fall, alumni celebrating a reunion, and many others, were treated to the law school's first ever Lifelong Learning Day. The afternoon event, comprised of three lectures on diverse areas of the law, was designed to encourage alumni to stay connected to the faculty and share in the experience of classroom learning and current academic thinking. The afternoon began with a panel featuring constitutional law expert Prof. Lorraine Weinrib; Aharon Barak, former President of the Supreme Court of Israel; and Professor Dieter Grimm, former Justice of the German Constitutional Court. The distinguished trio discussed the Hon. Frank Iacobucci's lifelong contributions to public law. Following the panel, guests were invited to attend a delightful refresher on principle and policy in contract law by Prof. Stephen Waddams. The afternoon ended with Islamic law scholar, Prof. Anver Emon, addressing recent issues concerning Islamic law from the perspective of both Islamic legal history and liberal constitutionalism. Alumnus, John Laskin ('76), was one of the many alumni who attended the panel discussions. "I found the session on public law helpful in terms of having access to current thinking in the academic community," said Laskin. "I look forward to other learning opportunities in the future."

CANADA'S NEWEST SUPREME COURT JUSTICE SHEDS LIGHT ON APPOINTMENT PROCESS

(L-R): Justice Marshall Rothstein and Dean Mayo Moran

SUPREME COURT JUSTICE MARSHALL ROTHSTEIN was Canada's first judicial nominee to take part in the new judicial appointment process introduced in 2006. In February of 2006, Rothstein appeared before a Parliamentary Committee and faced three hours of televised questioning, broadcast live across the country. On March 1, he was appointed to the Supreme Court of Canada. The U of T law school was honoured with a special visit by Justice Rothstein on October 26, for the 2006 Goodman Lecture. The Bennett Lecture Hall was standing room only as Rothstein shared, in a candid and often humorous way, his personal experience and views on the appointment process. He recounted how Prime Minister Stephen Harper surprised him in early February, by calling to offer him the nomination. There were two conditions – that he keep the nomination confidential and that he agree to submit to a parliamentary hearing. Initially "panic-stricken" by the prospect of being interrogated in public by Members of Parliament, Rothstein talked about lengthy meetings at his kitchen table with his advisers, lawyers Peter Hogg and George Thomson, who helped him anticipate scores of possible questions and answers. He joked that a "mock hearing" just two days before the proceeding made him realize that his alphabetized 100-page tome of "canned answers" was too cumbersome to be of any use to him. Despite the controversy, Rothstein predicts that parliamentary hearings are here to stay. "I don't think we will ever go back to a less public process for Supreme Court nominations. The genie is out of the bottle." He also argued that parliamentary hearings help to restore confidence in the judicial appointment process and contribute to the "demystification" of the judiciary. "At the end of the day", said Rothstein, "judges are just ordinary people who still have to open a can of tuna fish and empty the dishwasher." The U of T Faculty of Law's annual David B. Goodman Lecture and Fellowship was established in memory of the late David B. Goodman, Q.C. of Toronto by members of his family, friends and professional associates. Each year, the law school welcomes a distinguished member of the practising bar or bench for a few days of teaching and informal discussions with the student body and faculty.

ALUMNI NEWS

IN MAY 2006... **Neil Gold ('70), Stephen Grant ('73)** and **Elizabeth McIntyre ('76)** were awarded the 2006 Law Society Medal, the top honour awarded to lawyers who have made a significant contribution to the profession and whose stellar service reflects the highest ideals of the legal profession. **IN JUNE 2006...** The Hon. **Robert Rae ('77)** was among the distinguished recipients to receive an honorary Doctor of Laws from the Faculty of Social Sciences at McMaster University. **Dawnis Kennedy '03** was awarded a Pierre Elliott Trudeau Foundation doctoral scholarship to pursue her SJD studies at the Faculty of Law, University of Toronto. **IN JULY 2006...** **Clayton Ruby ('67)** received an honorary Doctor of Laws from the Law Society of Upper Canada for devoting his career to ensuring that those who are underprivileged and face discrimination are given equal access to the legal system. Earlier this year, he was also made a Member of the Order of Canada. **IN AUGUST 2006...** **Benjamin Shinewald ('02), Jason Mitschele ('02),** and **Sana Halwani ('04)** won 2006-2007 Action Canada Fellowships for their outstanding leadership initiative and commitment to Canada. **IN SEPTEMBER 2006...** **David Brown ('81),** a senior partner in the civil litigation and energy group at Stikeman Elliot LLP, was appointed justice of the Superior Court of Ontario. **Paul Davis ('86)** was appointed Chief Operating Officer of MedcomSoft Inc., a software development company dedicated to delivering empowering technological solutions for the healthcare industry. **Larry Banack ('75), Joseph Cheng ('00), Ted Donegan ('60),** and the Hon. **William C. Graham P.C., M.P., ('64)** received 2006 Arbor Awards in recognition of their outstanding personal service, loyalty and generosity to the University of Toronto over a number of years. **IN NOVEMBER 2006...** **Doug Harris ('92),** a former professor at the Faculty of Law, successfully defended his SJD dissertation at Harvard Law School. **Martin Teplitsky ('64)** received the Law Foundation of Ontario Guthrie award in part for his work in founding LAWS at the Faculty of Law, University of Toronto. Since its inception in 1996, this award has been bestowed upon individuals and organizations that carry out outstanding public service, make significant contributions to access to justice and symbolize excellence in the legal profession. **Kirby Chown ('79)** and **Janet Yale ('81)** were named in the Top 100 of Canada's Most Powerful Women by the Women's Executive Network. This prestigious award is a symbol of the success women have attained and represents a unique array of proven achievers from many walks of life. And 12 alumni – **Dany Assaf ('94), Michelle Awad ('91), Scott A. Bomhof ('93), Douglas A. Bryce ('95), Matthew Cockburn ('93), Tim Heeney ('92), Fiona Kelly ('90), Dennis Mahony ('93), Jon Northup ('98), Stephen Furlan ('92), Daniel Miller ('97),** and **Paul Michell ('94)** were recognized by L'Expert in the annual ranking of Canada's Top 40 Lawyers Under 40.

(L-R): Guthrie Medal Recipient, Martin Teplitsky and Prof. Lorne Sossin

IN DECEMBER 2006... **Raj Anand ('78),** a senior partner at WeirFoulds LLP and President of the U of T Faculty of Law's Alumni Association Council was appointed to the board of Legal Aid Ontario (along with Professor Sujit Choudhry). **Lillian McGregor ('02),** the first Canadian Aboriginal woman to receive an honorary Doctor of Laws degree from the University of Toronto, was awarded the Order of Ontario which recognizes stellar contributions in a variety of areas. Congratulations to all of our alumni! ***Please send us news of your achievements to j.kidner@utoronto.ca***

LAW FOUNDATION OF ONTARIO TEAMS UP WITH LAW SCHOOL TO SUPPORT ARTICLING IN THE PUBLIC INTEREST

In 2005, the Law Foundation of Ontario (LFO) initiated a ground-breaking four-year program designed to create articling opportunities at public interest organizations across Ontario. The first fellowships are now underway for the 2006-07 articling period. Administered by the U of T Faculty of Law's National Office of Pro Bono Students Canada, the LFO Public Interest Articling Fellowship Program was conceived by the LFO's Board of Trustees, including Prof. Lorne Sossin, Associate Dean of U of T Faculty of Law, who saw the goal of the program to provide fellowships to organizations that would otherwise have no access to funding for an articling position. "The Fellowships are an important opportunity to foster a healthy civil society and ultimately promote access to justice," said Sossin. A selection committee consisting of distinguished leaders from the judiciary, legal profession and legal academy helped to select the organizations that would benefit from the fellowships. The organizations were then given the go ahead to hire an articling student for a 10-month period and have the student's compensation and Bar Admission Course tuition covered by the LFO. "These fellowships have filled a large gap in the opportunities that were available to students to gain experience in public interest law after graduation," said Lianne Krakauer, Assistant Dean of Career Services at the Faculty of Law. "They offer a fantastic learning experience and a very competitive salary." Two U of T graduates, Laura Bowman and LeeAnn Sui, are currently completing their articles with fellowship recipients Lake Ontario Waterkeeper and the Barbra Schlifer Commemorative Clinic. "I went to law school to pursue public interest and public policy issues," said Bowman. "the LFO program has allowed me to pursue this in spite of a range of professional and financial obstacles." In November, the LFO announced that five of last year's fellowship recipients have been renewed for the 2007-08 articling period, including: Amnesty International Canada; the Barbra Schlifer Commemorative Clinic; the Canadian Internet Policy and Public Interest Clinic; Lake Ontario Waterkeeper; and the Public Interest Advocacy Centre. A sixth fellowship for the 2007-08 articling period will be awarded to an Ontario public interest organization in early 2007. The fellowships are also supported by the Law Society of Upper Canada, Legal Aid Ontario and the Career Development Offices at all the Ontario law schools.

HIGH SCHOOL STUDENTS EXPERIENCE INNER WORKINGS OF THE LEGAL SYSTEM

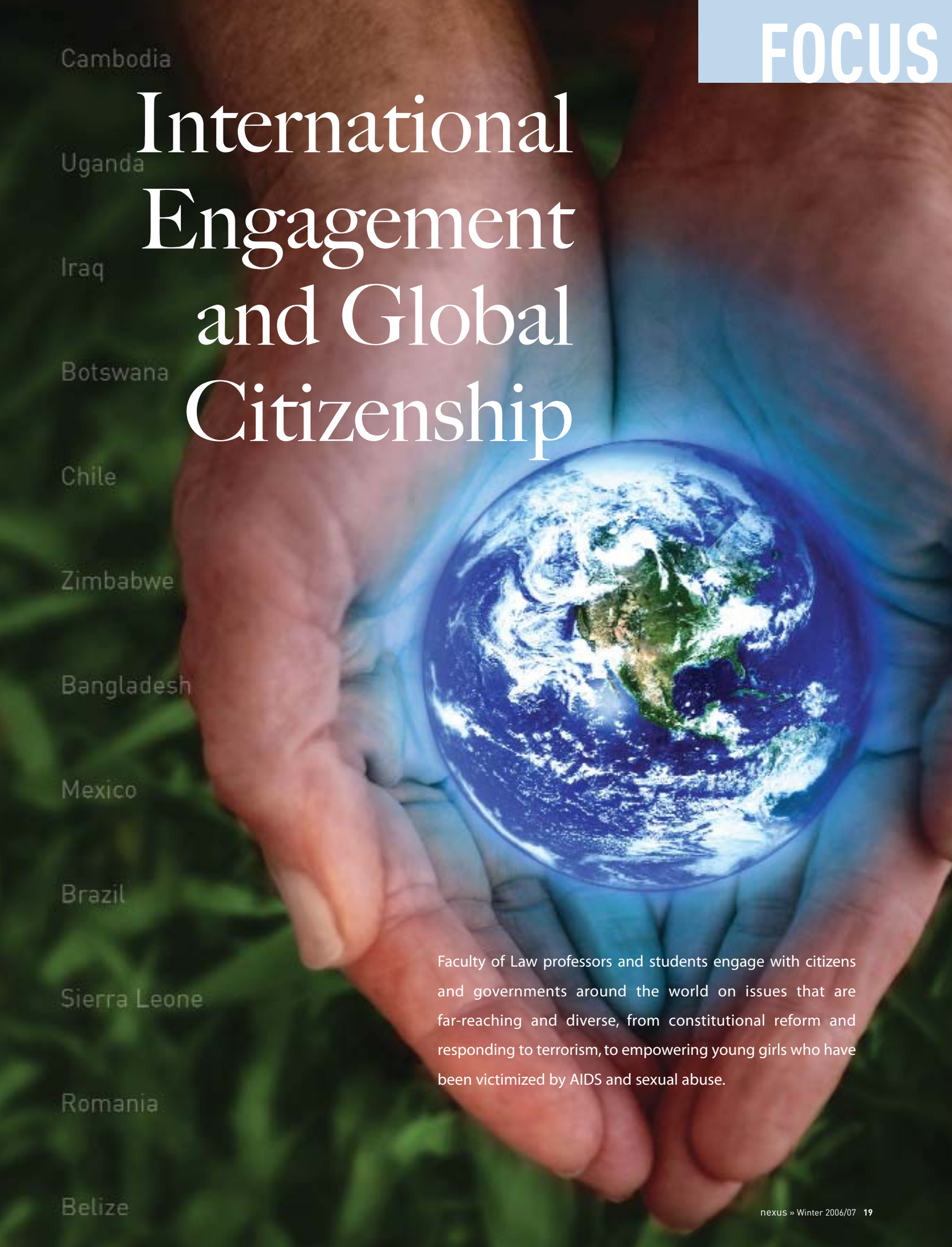
THIS SEPTEMBER, U of T's LAWS program – Law in Action Within Schools – more than quadrupled the size of its Court Experience initiative, allowing inner-city high school students to experience Ontario's justice system in action, as it happens. The unique court initiative, which began in April 2006 with just 12 students, this year allowed more than 60 students to spend a day observing the inner-workings of the criminal court system. Students were carefully selected and prepared and then partnered with a judge, justice of the peace, Crown attorney or duty counsel to witness first-hand Canada's justice system at work, including aspects rarely seen by members of the public. "The justice of the peace I was paired with gave me a robe to wear and I got to sit on the dais and see the court from her perspective," said 17-year-old Jeeniraj Thevasagayam. "Once I saw all the action and commotion, I was very excited and interested all day. This experience has made me interested in being a justice of the peace when I get older." Another student, 16-year-old Tristan Narro was equally excited about the experience. "I got to go with the defence lawyer to the jail cells below Old City Hall and interview several accused people who wanted bail," said Narro. "This is an experience I'll never forget." Other students who took part in the program sat at the counsel table in the courtroom to witness a sexual assault trial and observed proceedings in specialized courts including mental health court and gladue (aboriginal) court. The program, which was initiated thanks to the efforts of Mark Conacher and other justices of the peace, continues at Old City Hall and will expand to include job shadowing with legal professionals working at College Park Court House.

DEAN'S LEADERSHIP LUNCHES A HIT WITH STUDENTS

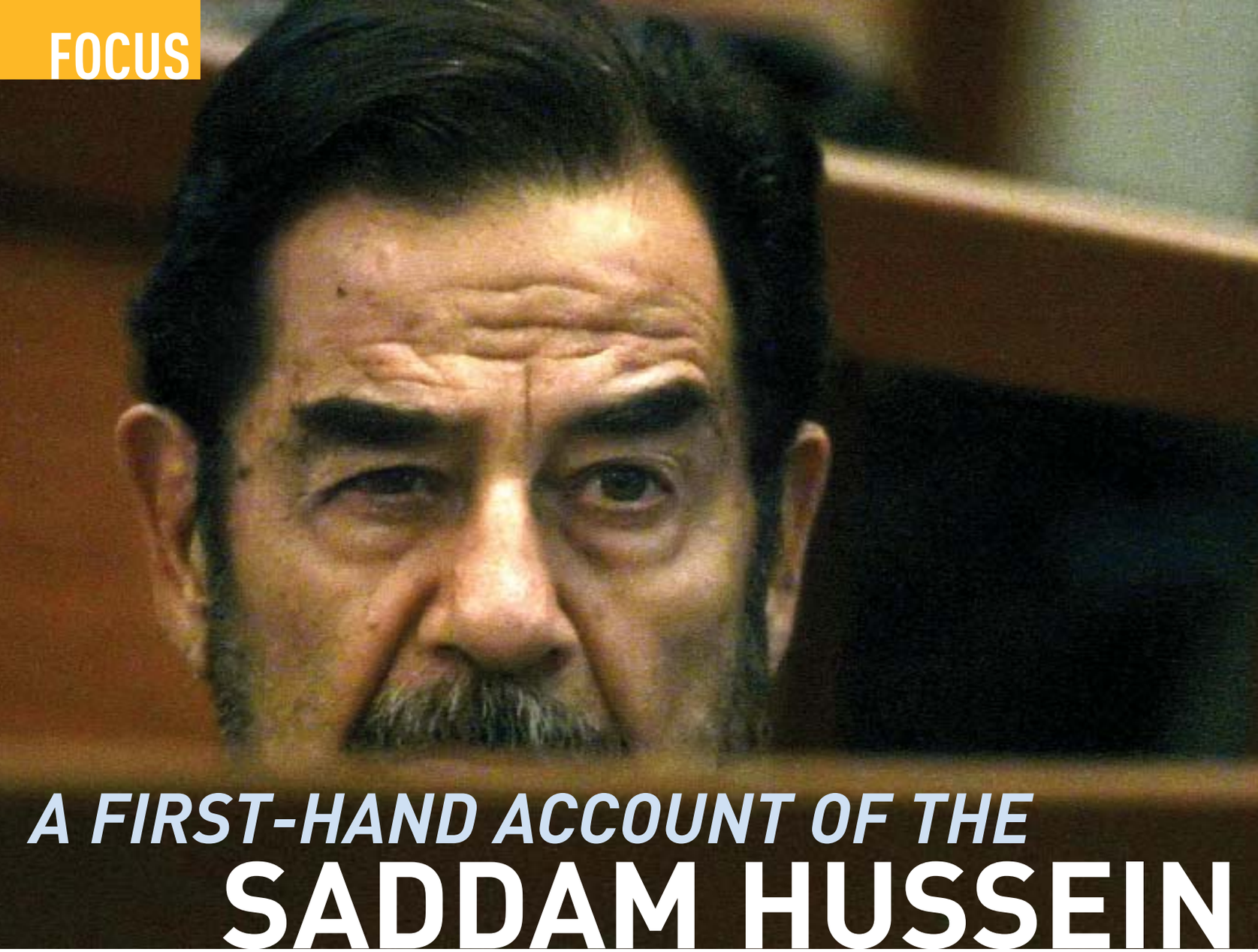
Ian Mallory ('84)

Alumnus, **Michael Emory's** passion and enthusiasm for his career in law and real estate came across loud and clear to students who had the opportunity to meet with him at the Dean's first leadership lunch of the term. On Nov 1st Emory returned to the law school to meet with students and share his advice, knowledge and experiences since graduating in 1982. "It's good to be reminded that our careers don't start and end in law firms," said Emory. "One of the main reasons I came to law school was because I thought it was a useful jumping off point for a range of career paths." Emory's prediction proved true for him. In 1988, after a successful few years at Aird & Berlis, Emory left practice to start his own real estate company. It was the tail end of the real estate boom. He started by buying up small store fronts in good locations, renovating them and leasing them as office space. But challenging times were ahead. Emory suffered through the real estate crash of the 1990s when bankruptcy was rampant and 20% vacancy the norm. While others quickly left real estate behind, Emory decided to change his tactic with a new focus on real estate restructuring. It proved to be a sound decision. In 1995, he reinvented the company again, buying industrial buildings and turning them into renovated beam & brick office spaces. Today, Emory's portfolio includes three million square feet and offices in Montreal, Winnipeg and Quebec City. A second Dean's Leadership Lunch with U of T law alumnus, **Ian Mallory** ('84) proved equally interesting for students. Mallory, who is President of Pickworth Investments LP, has built a highly successful career as head of a venture advisory firm in Calgary that specializes in energy and natural resources. Over the past two decades, he has been an executive at three major Canadian energy companies, developing and executing projects around the world. While at Westcoast Energy between 1995 and 2002, Mallory built its Mexican subsidiary into Canada's largest investor in the country. Prior to his experience in the energy sector, he spent four years as counsel to the treasury of the World Bank. Today he keeps busy outside of the office by teaching a course at the Haskayne Business School at the University of Calgary where he is also on the Advisory Boards of the Faculty of Social Sciences and the Latin American Research Centre. *(with files from Sarah McEachern and Chris Graham).*

International Engagement and Global Citizenship



Faculty of Law professors and students engage with citizens and governments around the world on issues that are far-reaching and diverse, from constitutional reform and responding to terrorism, to empowering young girls who have been victimized by AIDS and sexual abuse.



A FIRST-HAND ACCOUNT OF THE SADDAM HUSSEIN

Professor Nehal Bhuta, who joined the Faculty of Law in January 2007 to teach international human rights, witnessed the Saddam Hussein trial first-hand on behalf of the International Justice Program of Human Rights Watch. After ten months of observation and dozens of interviews with judges, prosecutors and defense lawyers, Prof. Bhuta authored a 100 page report entitled "Judging Dujail: The First Trial Before the Iraqi High Tribunal" which was released on November 20, 2006. Human Rights Watch was one of only two international organizations that had a regular observer presence in the Iraqi courtroom and to date, this is the most comprehensive analysis of the highly charged trial. The following excerpts were taken from an interview with Prof. Bhuta on the CBC Radio "Dispatches" program on November 16, 2006, immediately following the release of the report.

THIS TRIAL WAS THE FIRST BEFORE THE NEW IRAQI HIGH TRIBUNAL, TRYING PEOPLE FOR HUMAN RIGHTS VIOLATIONS. WHAT DID IT HAVE TO ACCOMPLISH AND DOES THE OUTCOME MEET THE TESTS OF FAIRNESS, CREDIBILITY AND SCRUTINY?

PROF. BHUTA: This kind of trial has to be scrupulously fair. It has to meet international fair trial standards in part because of the controversial nature of the individuals who are on trial and the political passions that they incite on both sides. But also because what is at stake is a 25-year history of serious human rights crimes. This is the first opportunity to meticulously document those crimes and to establish who is ultimately responsible for them.

WAS THIS ACCOMPLISHED FAIRLY, CREDIBLY AND WILL IT STAND UP TO SCRUTINY?

PROF. BHUTA: From the outset, we had concerns in terms of the set-up of the tribunal. Human Rights Watch had urged the creation of a mixed national and international tribunal under U.N. management along the lines of Sierra Leone. Our assessment of the Iraqi judicial system and the aftermath of 25 to 30 years of Ba'th Party rule was that it was highly unlikely to be able to adjudicate this trial fairly and competently in accordance with international law. The U.S. at that time rejected this proposal, it was vigorously opposed to U.N. involvement and it insisted that Iraqi judges could conduct the process themselves

TRIAL

"There are fundamental doubts about the independence and impartiality of the court. By having it solely under Iraqi control, there was always the risk that the court would not be free of political interference. The Iraqi government failed to show a commitment to ensuring a fair trial."

with American assistance. We have concluded that the trial did not meet fair trial standards and even more disturbingly, our concern is that the actual prosecution case failed to address very important elements of international criminal law which leaves us concerned that the record that is established by this trial may not stand the test of time.

DID SADDAM HUSSEIN GET A FAIR TRIAL?

PROF. BHUTA: No. But it wasn't just Saddam; the seven other people who were on trial with him also did not receive a fair trial.

WHY DIDN'T HE GET A FAIR TRIAL? WHAT WERE THE MOST SUBSTANTIAL EGREGIOUS EXAMPLES OF UNFAIRNESS?

PROF. BHUTA: There are fundamental doubts about the independence and impartiality of the court. By having it solely under Iraqi control, there was always the risk that the court would not be free of political interference. The Iraqi government failed to show a commitment to ensuring a fair trial. Members of the government and members of parliament regularly attacked the court for being weak and demanded that it be harsher with Saddam. The other presiding judge conducted himself in a way which called his impartiality into question. For example, he was shown to have been a political prisoner in 1963 under the first Ba'th régime, which obviously raises concerns about his ability to be impartial in a case concerning the former government. Other serious issues which arose during the trial involved basic procedural rights that everyone is entitled to under international law. These include the basic right to question and challenge a witness who has presented evidence against you.

SADDAM DIDN'T GET TO DO THAT. IN FACT, THERE WERE TIMES WHEN SOME OF THE DEFENDANTS WEREN'T EVEN ALLOWED TO BE IN THE COURTROOM WHEN EVIDENCE WAS PRESENTED AGAINST THEM?

PROF. BHUTA: Yes, that did occur on occasion for reasons we could not understand. Fundamentally, almost half of the prosecution witnesses were not required to appear in the courtroom to be questioned.

DOESN'T THAT GO AGAINST WHAT CONSTITUTES JUSTICE HERE IN THE WESTERN WORLD?

PROF. BHUTA: Yes, but not just in the West. It's a basic requirement of the international covenant on civil and political rights to which Iraq is party.

QUESTION: HOW MUCH TIME DID YOU ACTUALLY SPEND IN THE COURTROOM?

PROF. BHUTA: In total, I spent about 12-13 sessions and my colleague spent around 20 sessions in the courtroom. Between the two of us, we covered about 75% of the trial.

WHAT WAS THAT LIKE AND HOW FAR BEHIND THE SCENES CAN YOU TAKE US IN TERMS OF THE PRESSURES THAT WERE UPON THE COURT?

PROF. BHUTA: It was something of a surreal experience. The court itself is deep within the heart of the green zone so in order to get to and from the court, we had to go through a fairly elaborate process of screening and security clearances. We were basically transported to and from the courtroom by representatives of the U.S. Embassy. Behind the scenes, there was a continuous and significant presence of U.S. advisors.

WERE THERE ANY CIRCUMSTANCES UNDER WHICH THE IRAQI HIGH TRIBUNAL COULD HAVE SATISFIED INTERNATIONAL SCRUTINY?

PROF. BHUTA: Yes, this was a tremendous lost opportunity and it was lost because of an ideological opposition to international forms of justice by the Bush administration. Within the last 15 years, the international community and specifically the U.N. has built up considerable experience in conducting and managing these kinds of trials in a way that meets fair trial standards. While there can be criticisms of the way some trials have been run in the past, there is an enormous body of expertise that was simply excluded because of U.S. insistence that this be an Iraqi controlled process.

FOUR OF THE FIVE JUDGES LEFT DURING THE TRIAL AND THE PRESIDING JUDGE OFTEN SEEMED TO BE ALMOST HOSTILE WITH THE DEFENDANTS AND LOST HIS TEMPER. WHAT CAN YOU CONCLUDE FROM THIS?

PROF. BHUTA: It reflects the enormous pressure that the judges were under. Indeed, this is something that they conveyed to us when we interviewed them privately. It's very hard to have confidence in the fact-finding if 80% of the judges have not been present for the trial at different times. The final presiding trial judge was very concerned to show that he was being tough with the defendants and that is a direct influence of the enormous public pressure and criticism that was placed on the court by the Iraqi government and local public opinion. This was a real failing on the part of the Iraqi government. It just wasn't interested in doing anything that could have promoted the climate for a fair trial.

WHAT CAN YOU CONCLUDE ABOUT THE CREDIBILITY OF THE IRAQI HIGH TRIBUNAL?

PROF. BHUTA: In our view, these problems are not isolated to this particular case but potentially affect all future trials. Our concern is that as a judicial institution, at the moment, it does not have the credibility to conduct trials of this kind.

DOES THAT MEAN THAT THE IRAQI HIGH TRIBUNAL SHOULD BE DISBANDED, RETHOUGHT OR REVISED?

PROF. BHUTA: Yes, I think that we would urge a fundamental revision of the way in which the court is run and a much greater role in terms of management and oversight by the international community such as the U.N.

THE VERDICT WAS DEATH FOR SADDAM. HUMAN RIGHTS WATCH OPPOSES THE DEATH PENALTY BUT IN THE CIRCUMSTANCES THAT YOU HAVE DESCRIBED, WHAT DO YOU MAKE OF THE VERDICT?

PROF. BHUTA: I think that we would all agree that in the aftermath of a fundamentally unfair trial, the death penalty is completely indefensible.

DID THE COURT ACCOMPLISH ANYTHING THAT IS OF VALUE TO FUTURE TRIBUNALS?

PROF. BHUTA: Unfortunately, in terms of an example of justice, it's more of a negative example than a positive one. The verdict is unlikely to be perceived in Iraq and in the Arab world generally as the product of a credible process. I think the one thing which was encouraging was that there was a process by which victims of human rights violations were able to take a stand and testify and I think that was a very powerful dimension to these proceedings.

IF THE NUREMBURG TRIALS AFTER WORLD WAR II SET THE BAR FOR INTERNATIONAL JUSTICE AFTER A CONFLICT, WHAT WILL THIS TRIAL BE NOTED FOR?

PROF. BHUTA: Tragically, I think this trial will be basically perceived as worse than Nuremburg. Although Nuremburg was far from perfect, it has stood the test of time and proved to be a building block. The process in Iraq could have formed part of this continuing development but sadly, it hasn't.

GIVEN YOUR CONCLUSION THAT THE TRIAL WAS NOT FAIR AND ON 30 DECEMBER 2006, SADDAM HUSSEIN WAS EXECUTED. WHAT ARE YOUR VIEWS ON THIS?

PROF. BHUTA: Unfortunately, the process by which Saddam Hussein was executed, and the conduct of the execution itself, confirmed our worst fears concerning the degree of political interference in the trial. First, the appeals court denied the appeal in less than 25 days, and without holding a hearing. The defence lawyers were given only 13 days to file their appeal submissions, instead of the 30 days required under Iraqi law, because the 300-page trial judgment was not published until 17 days after the trial chamber verdict was handed down. I find it hard to believe that the appeals court could have adequately reviewed a 300 page decision, and the numerous procedural concerns, in less than 25 days. The government then moved to execute Saddam Hussein as quickly as possible, failing to comply with required legal procedures such as having the Presidency Council ratify the death sentence and ignoring a long-standing law which prohibits executions during the Eid al-Adha (an Islamic holiday). Finally, footage of the execution reveals that the prisoner was taunted and mocked in his final moments, adding further to the strong impression that this was simply an exercise in revenge by a political faction, rather than justice carried out in the name of the Iraqi nation as a whole. Unsurprisingly, the undignified behaviour of the executioners and witnesses to the execution, and the sectarian taunts that were invoked, has enraged segments of Iraq's population and further diminished the credibility of the trial throughout the Arab world.

I UNDERSTAND THAT YOU WILL BE TEACHING INTERNATIONAL HUMAN RIGHTS AT THE UNIVERSITY OF TORONTO IN THE NEW YEAR. HOW WILL THE EXPERIENCE OF WITNESSING SADDAM'S TRIAL AFFECT YOUR TEACHINGS?

PROF. BHUTA: Law in many ways addresses concerns that are in the margin but which can be brought to the centre of international politics and that is certainly a perspective that I will bring to my teaching. ■

Prof. Bhuta was the Arthur Helton Fellow in the International Justice Program at Human Rights Watch where he has been following the political and social justice issues taking place in Iraq since 2003. He served as a consultant on Iraq to the International Center for Transitional Justice in New York in 2003-2004, and in this role, co-led a field mission to Iraq for a lengthy study about Iraqi attitudes towards justice and reconciliation. In 2005 and 2006, he spent 8 weeks in Iraq observing the trial and researching the court. Prof. Bhuta joined the U of T Faculty of Law in January 2007.

Students
TARA DOOLAN, JARED KELLY AND GRAEME HAMILTON
raise funds for Girl Child Network in Zimbabwe

It's not often that one encounters a real-life hero or heroine. When law students Tara Doolan, Jared Kelly and Graeme Hamilton met Betty Makoni in Zimbabwe this past summer, they knew immediately that they had.

More than a two-hour drive from the closest town, battling motion sickness and fatigue, second-year law student Tara Doolan carefully navigates her way along the rugged dirt roads and mountainous terrain of rural Zimbabwe. Massive boulders and ditches spring up unpredictably at every turn, threatening to crumple the beat-up 1997 Toyota she has borrowed from a local resident. Traveling with her is third-year law student Jared Kelly, with video-camera in hand to document the trip. The two are part of the LIFT Project, a student group at the Faculty of Law that fundraises and advocates for international NGOs and is part of the law school's International Human Rights Program.

Their journey started more than a day ago. With them is Betty Makoni, a well-known community activist in this often turbulent southern African country of 12 million, located on the northeastern border of South Africa. Their mission: to save an 11-year-old girl named Margaret who had recently been sold into marriage to a 76-year-old villager. In exchange for his daughter, the father collected $3 and a mattress. A local police officer, whom Betty persuaded just two hours earlier to accompany them, is clearly more accustomed to this type of expedition than his student companions. A body guard is also present, "just in case."

As the sun slowly sets, the students brace themselves for the confrontation they are about to face. But what they find is far different from what they had expected. Three tiny mud huts surround a small fire pit. Old broken pots lie scattered in the dirt, the closest water more than a kilometre walk away. The father, emaciated from the late stages of AIDS, lies motionless on a straw mat; the mother sits listlessly, unable to respond to the cries of the baby dangling from her arms and the two toddlers who surround her.

What started out as a mission to bring criminal charges against the father and remove Margaret to a safe place quickly turns into a mission to save an entire family from starvation and disease. Within minutes they are packed and ready for the five-hour journey to one of Betty's "Empowerment Villages" outside the town of Rusape, where they will receive food, shelter and medical attention.

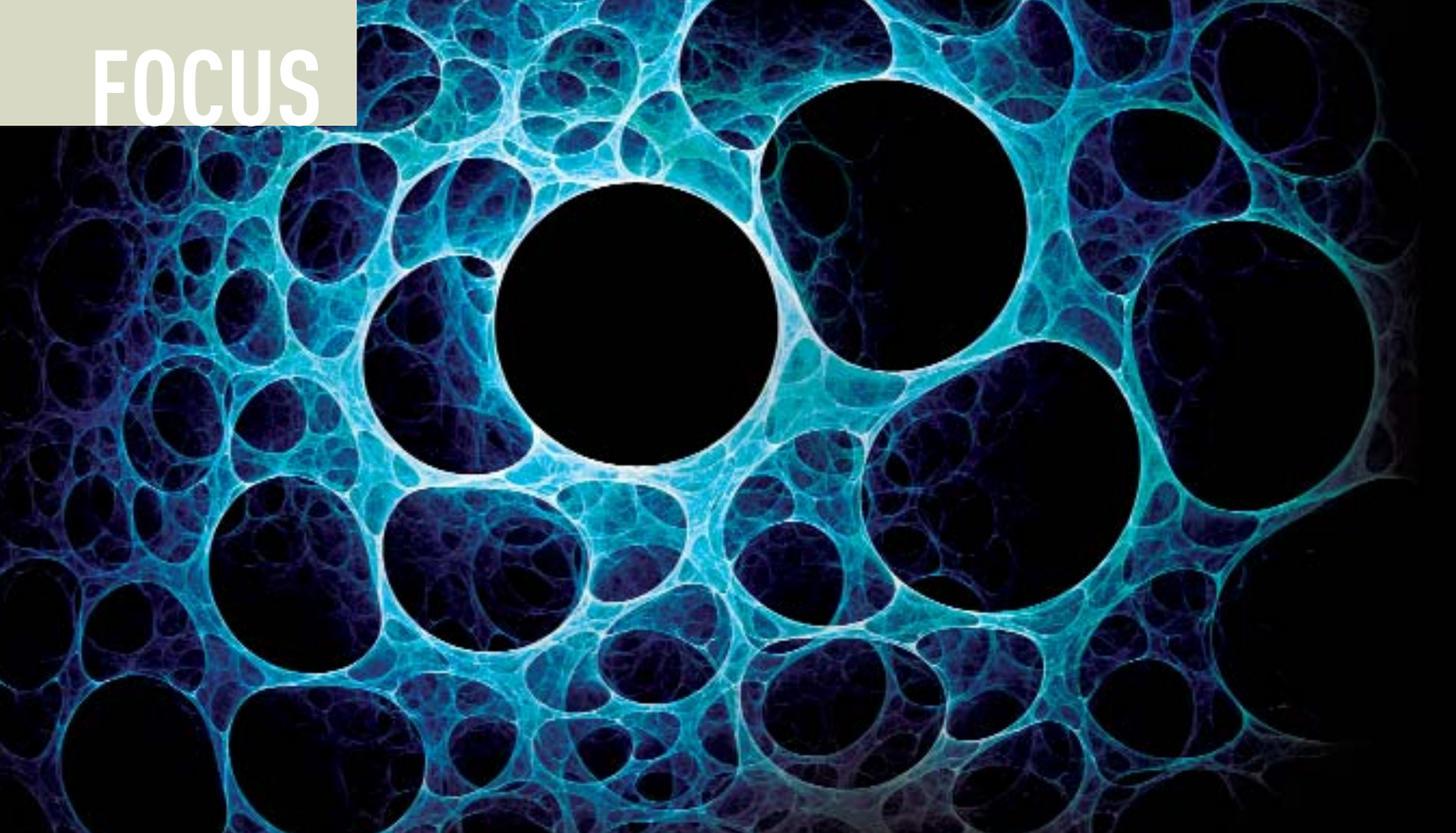
Betty Makoni, Founder of Girl Child Network in Zimbabwe, thanks law student Jared Kelly ('07) at the LIFT Fundraiser on November 14 at the Gladstone Hotel

Betty Makoni, the founder and inspirational force behind the success of Girl Child Network (GCN), has made it her life mission to save young girls in her country who have been sexually abused. She offers them sanctuary and a chance at a better life. Herself a childhood survivor of incest, Betty sees more than eight cases of child sexual abuse daily at her head office in Chitungwiza, a disturbing number even before one realizes that most cases are believed to go unreported. Betty has spent most of her weekends over the past eight years traveling to remote villages saving young girls like Margaret.

Tara and Jared credit third-year law student Graeme Hamilton, who was volunteering at the time in Botswana as part of another LIFT project, for recognizing the great opportunity to help GCN. After hearing about Betty, Graeme made the eight-hour journey from Botswana to the capital of Zimbabwe on the back of a pick-up truck. Once there, he convinced Tara and Jared to produce a documentary film about Betty and her work at GCN in order to raise funds for the organization.

The 30-minute documentary film, which premiered on November 14, 2006 at the second annual LIFT Gala, raised close to $20,000 for GCN. "Betty has given hope to an entire nation of girls," says Jared. "She is a true-life heroine." Tara, who spent the rest of the summer with GCN drafting legislation to stiffen penalties for sex offenders and creating information packages to assist children to understand the court system, readily agrees. "I have great respect and admiration for Betty. Her spirit and energy in the face of so much hardship have been a great source of inspiration for me." ■

By Jane Kidner



BLACK HOLES AND THE RULE OF LAW

BY PROF. DAVID DYZENHAUS

Is the rule of law optional for liberal democratic societies when they are faced with threats to national security? Put differently, is a society's commitment to legality like an on/off switch, so that the rule of law can be simply set aside during states of emergency and reinstated at the discretion of governments once the emergency has passed?

This question has been forced on us by the responses of many Western democracies to 9/11. They have used either legislation or executive order to create a variety of legal black holes – situations in which individuals suspected of being threats to national security are detained indefinitely or for short periods of time without the prospect of a criminal trial and without any proper review of the government's claim that they are in fact threats to security.

The creation of such black holes should concern us greatly, since they strike at the very heart of the Western tradition of constitutionalism. That tradition is committed to a principle of legality, which requires that the decisions of public officials have authority only on condition that the officials can demonstrate that they are legally authorized to act as they have. Indeed, that tradition demonstrates what we can think of as the compulsion of legality – the drive to extend the reach of the rule of law so that all political power is exercised subject to its rule. Since by definition the rule of law does not control the situation of someone in a black hole, even if law is used to put him or her there, black holes do more than challenge our commitment to constitutionalism; they also raise a deep puzzle about it. There seems to be something paradoxical about the claim that law can be used to suspend its own operation.

Some political and legal thinkers have concluded that our societies are founded ultimately on a political, not a legal constitution, a fact demonstrated they think by the necessity for the government to override legal constraints during times of great stress. I acknowledge that this concern might seem misplaced if the rule of law can play no serious role during a state of emergency. A very significant factor in this debate is the fact that while judges are usually regarded as the guardians of the rule of law, in emergencies they have a dismal record when it comes to upholding law's rule. They tend to defer submissively to executive judgment. Even if their jurisdiction to review executive decisions is not expressly ousted or excluded by the statute or regulations that authorize detention, they are prone to impose on themselves a standard of review that requires that only official decisions that can be shown to be

Black holes do more than challenge our commitment to constitutionalism; they also raise a deep puzzle about it.

utterly irrational should be invalidated. Moreover, in the situation of decisions based on grounds of national security it will often appear impossible to demonstrate such irrationality given the state's inevitable claim that the most relevant information cannot be made public.

However, recently both the House of Lords (the "Belmarsh" decision) and the Supreme Court of the USA *(Hamdan)* have shown that judges who are committed to the rule of law can impose its discipline on governments who seem determined to escape it. And our own Supreme Court should shortly show whether it is willing to follow this trend, when it pronounces on the system of detention in Canada based on security certificates, a system which does not permit detainees an effective challenge to the state's case against them. But even if our Supreme Court follows this trend, one has to be aware of a danger inherent in any attempt to impose the rule of law on deeply political decisions.

IN responding to the compulsion of legality, government and the legislature can choose to move in two quite different directions. Either they can move in the direction of legal and institutional reform which increases the control of the rule of law over public decisions or they can put in place controls which amount to what a British judge recently called a "thin veneer" of legality over what in substance is arbitrary power.

Put differently, the compulsion of legality can set in motion two very different cycles of legality. In one cycle, the institutions of legal order cooperate in devising controls on public actors which ensure that their decisions comply with the principle of legality, understood as a substantive conception of the rule of law. In the other cycle, the content of legality is understood in an ever more formal or empty a manner. In this case, the compulsion of legality may result in the subversion of constitutionalism – the project of achieving government in accordance with the rule of law. The political constitution asserts itself under the guise of the legal constitution. Indeed, the very requirement that all acts of public power have a legal authorization might become counterproductive if the kind of power sought is of a kind that cannot be legally controlled once authorized. It may, that is, result in the creation of legal "grey holes."

While a black hole is a space devoid of legal controls, a grey hole is a space in which there are legal controls, but these are not substantive enough to give those in the hole any real protection – there is just enough of a veneer of legality to provide government with a basis to claim that it is still governing in accordance with the rule of law, and thus to garner some legitimacy. If grey holes are in substance black, their existence might thus seem even more dangerous for the rule of law than black holes. A little bit of legality might, that is, be more lethal to the rule of law than none. However, one must also keep in mind that lawyers and judges can try to turn the veneer of legality into something better by building more substance into the legal controls. They accept, that is, that the government and the legislature have committed themselves to ruling through the rule of law, and use that commitment as a legitimating basis for finding that the legislature must have intended real not sham controls.

THE next couple of years will be crucial for answering the question whether the rule of law is optional. While at one level, such an answer requires a theoretical elaboration of what we can think of as the moral resources of the Western tradition of constitutionalism; at another level, a lot will depend on practice. As governments and legislatures respond to judgments which seek to keep them on the path of the rule of law, they will have to experiment – to come up with new institutional solutions to the undoubted problems that attend imposing the discipline of the rule of law on very sensitive political decisions. Ultimately, and as it should be, the test of good theory will prove to be practice. But the judicial duty to uphold the rule of law includes the duty to require that legislatures and governments undertake experiments in institutional design in a good faith effort to maintain the collaborative, constitutional project of their tradition. ■

Student RAN GOEL supports constitutional challenge in Uganda

(L-R): Rachelle Dickinson, Alex Rezide and Ran Goel

It's one thing to learn about freedom of expression in first-year constitution law class – quite another to experience it first-hand, when a country's laws, and a person's liberty, are at stake. That's exactly the opportunity that law student Ran Goel had through the law school's International Human Rights Clinic (IHRC).

Ran, now in his final year of law school at U of T, has spent the past 18 months – and a trip to Uganda – helping to defend a local radio-show host, Andrew Mwenda, charged with "sedition": uttering words "with the intention to bring into hatred or contempt or to excite dissatisfaction against the person of the president." If found guilty, Mwenda could face up to five years in jail.

Mwenda publicly speculated in August 2005 that the Ugandan government was responsible for the tragic death of Sudan's Vice-President, John Garang, in a helicopter crash. The Ugandan government and its president responded by temporarily shutting down the radio station and arresting Mwenda on the criminal charge of "sedition." He was later freed on bail.

Mwenda's counsel heard about the human rights work of the IHRC and contacted Director Noah Novogrodsky for advice. Partnering with Canadian law firm Goodmans LLP., their role, says Ran, has been "to provide comparative legal research on sedition and to help mobilize public awareness to support the challenge."

Ran's role became even more critical in November 2005 – when the Ugandan prosecution brought 15 counts of "promoting sectarianism" to the charges against Mwenda. Akin to Canada's hate law, but relating to promoting ill will between sects or religions, this provision is much more nuanced and will be more difficult to challenge.

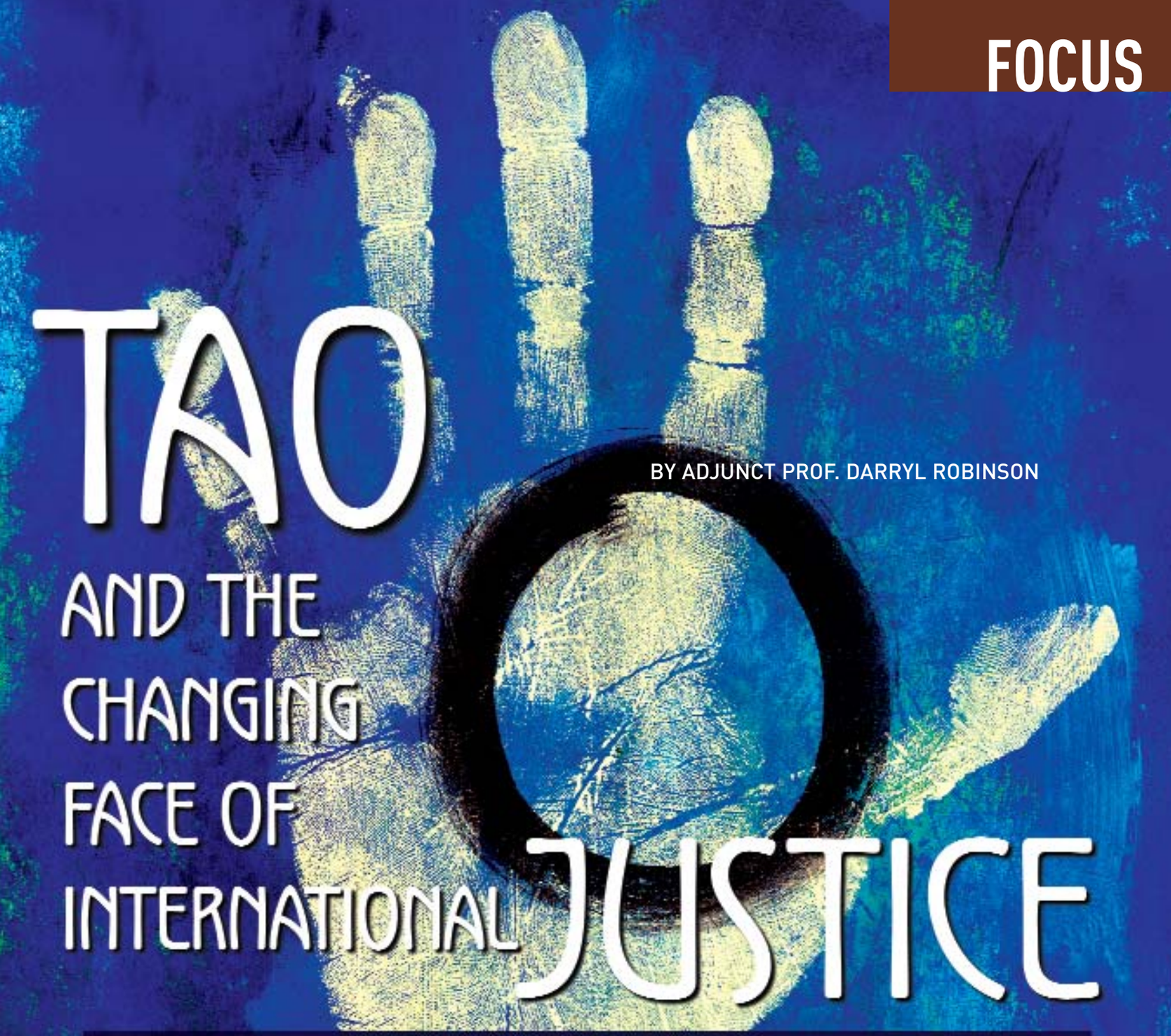
Once the hearing date was set, Ran and Goodmans' associate and law school alumnus Rachelle Dickinson had literally just days to get to Uganda, meet with lead counsel to prepare for the hearing and contact local nongovernmental organizations, civil-rights groups and media to raise awareness. Now, two IHRC trips later and with the hearing date still a moving target, Mwenda's challenge is finally to be heard in constitutional court in early 2007.

"My time in Uganda was a tremendously powerful experience," says Ran. "The legal dimension of this case is indeed intriguing, but good research only gets you so far. The case's success ultimately hinges on personalities: the defence counsel, the defendant, the prosecution, the panel of justices, the court officials. You can only get a taste for that on the ground."

Ran's analysis indicates that freedom of expression under Uganda's constitution can make use of Canada's Charter experience, based on a very similarly worded limitations clause. "Our concern in the Mwenda case," says IHRC Acting Director Darryl Robinson "is that both the sedition and promoting-sectarianism laws are over-broad. Based on the way they are written, it's difficult to tell if the charges are legal or illegal. A lot of journalists certainly don't know where they stand in Uganda."

They will soon find out whether the country's hard-won constitution of 1995, guaranteeing freedom of speech, has any teeth. ■

By Jane Kidner and Lisa E. Boyes



TAO AND THE CHANGING FACE OF INTERNATIONAL JUSTICE

BY ADJUNCT PROF. DARRYL ROBINSON

We live, we experience, we reflect only in the present moment. Memory and learning flow only from the past. Our planning applies only to the future. This is the irreducible consequence of how we experience time. We cannot learn from the future, nor improve the past.

This has consequences for law, as has been noted by scholars such as Philip Allott. The lawmaker sits today, gazes at yesterday to discern what laws would have been useful, and then promulgates such laws for tomorrow. Law is prospective in application but retrospective in imagination.

When States and civil society coalesced to design an International Criminal Court (ICC), they were deliberately groundbreaking. Yet their imaginations and assumptions were constrained by the experiences of the past. What they could not foresee was the extent to which the operation of the Court would further transform the context. As a result, the favoured doctrines and mindsets in international criminal law are already outdated and need to be re-thought.

To take only one example, the experiential foundation for the Rome Statute was thirty years of governments either providing impunity or experimenting with transitional justice. But a permanent Court is able to start investigating while conflict is raging and before there is any 'transition' in sight: we have ushered in a new context of "pre-transitional justice." Hallmarks include: territories out of control, perpetrators protected by armies, unavailability of police powers, and multiple international actors operating in the same space with differing agendas, such as peace and stabilization, delivery of humanitarian aid, demobilization and democratization.

There are two major mindsets on the role of the international prosecutor in politicized contexts. The 'realist' mindset is that if the situation is delicate and complex, the prosecutor should simply stay away. This however is a convenient abnegation of the very possibility of international justice, since all mass atrocity situations have political dimensions.

The dominant mindset is 'formalist': most States and NGOs expect the international prosecutor to behave like a Western national prosecutor: asserting supremacy over all other considerations, issuing orders to other actors in the name of the law, and castigating failures to provide full and immediate cooperation. For the prosecutor to even consider a competing interest would constitute 'politicization' and result in loss of legitimacy.

Yet the context in which the model of the Western prosecutor emerged is utterly unlike a pre-transitional justice context. Trying to import the same model is as appropriate as trying to play squash on a tennis court. We need to develop a new conception, rejecting both the realist model and the Western formalist model. In the spirit of the truly international, we must turn to alternative sources of inspiration for a new model. I will suggest here the Tao prosecutor. I should make two clarifications. First, while I am admittedly writing here in a somewhat unorthodox manner, I am sincere in my wish to provoke fresh thinking about new models. Second, I am not addressing the selection of cases but rather the method and mindset of investigation.

The formalist prosecutor focuses in a dutiful, blinkered manner on his own goals. The Tao Te Ching warns us that when we are immersed in our own goals and identity, we will see only "the manifestations" but not "the mystery"; we will see "the ten thousand things" but not "the one." Thus the Tao prosecutor remains open-minded while carrying out his mandate, "detached and thus at one with all," "serving with humility", caring for other legitimate goals and seeking humbly to contribute to the greater whole. The Tao prosecutor is principled and vigilant yet also humble, compassionate and subtle.

"Yield and overcome," advises the Tao Te Ching. "The stiff and unyielding is the discipline of death; the gentle and yielding is the discipline of life." The formalist prosecutor, issuing orders to other actors but yielding nothing, may receive some sullen cooperation (but only after legal obligations have been carefully and resentfully parsed) and will have limited impact. The Tao prosecutor speaks with other actors, manages his activities to minimize disruptions to other efforts, and demonstrates benefits he can provide to others through working together. As a result, cooperation flows unforced from a growing network of partners. The cooperation exceeds what is required under legal obligations. The investigation is more efficient and effective and has a better impact.

Formalists are eager to see the grand and satisfying theatre of the Prosecutor publicly excoriating States, such as Sudan, if they are perceived as not cooperating enough. The Tao prosecutor is willing to use aggressive means but only where absolutely necessary: "weapons are not a wise man's tools; he uses them where there is no choice." Mastering others requires force, and force leads to loss of strength. Thus the Tao prosecutor avoids flashy showdowns ("he who makes a show is not enlightened") for as long as respectful engagement continues to produce results. The Tao prosecutor is respectful, not puritanical ("I am good to people who are not good"). His focus is humble effectiveness. It may be that this means that the progress cannot be shown to a curious public, but in the end, the results will speak for themselves.

In the event of a peace-versus-justice conflict, the formalist prosecutor has a ready answer: *fiat justitia* – let justice be done though the world perish. The Tao is skeptical of the imposition of ready answers: "When wisdom and intelligence are born, the great pretence begins." "When men lack a sense of awe, there will be disaster." Thus the Tao prosecutor is not dogmatic, but tries to see through the ten thousand things, in order to take selfless right action when the "moment of action" arises. To date, writing on this sensitive topic has been polarized rather than detached, and as a result has uncovered only the manifestations but not the mystery; we need to identify the underlying commonality among the seeming contradictory efforts in order to learn how best to balance them.

The Tao Te Ching implores us, "if a man is bad, do not abandon him." At present, the convicted war criminal is a byproduct of the trial process, an enemy of all humanity, to be warehoused until completion of sentence. We may need to reflect more deeply on the retributivism that dominates international criminal law to assess what our goals are.

Many other questions must be asked so that we may see beyond the manifestations and glimpse the mystery. International lawyers have completed a Herculean task of erecting an international criminal system in a decade. But the system is grossly under-theorized, in comparison with the questioning at the national level which has been enriched by criminology and legal theory. The international system is based on simplistic beliefs about deterrence, whereas we need to find its place in a richer mosaic of prevention. We also need to examine the lens of international criminal law. For example, we focus on warlords and ringleaders as "persons most responsible," while other kinds of corporate complicity may be invisible under our existing doctrines. As a result, we might arrest warlords and decapitate groups, but as long as the economic incentives remain, others will simply spring up in their place. Thus, we need to look at war economies and the incentives they create, and the role of business in international crimes. We also need to examine the interconnections between war crimes, illegal business, arms trafficking and terrorism. The Tao Te Ching suggests that if we can better perceive the nature of things, then the weak can overcome the strong. After all, "the truth often sounds paradoxical." ■

Student HUGO LEAL-NERI
gives Chilean-Canadian family hope

For 30 years Carolina Gajardo and her son, Ricardo Maturana, have lived with little hope of ever knowing what happened to their husband and father, Luis Emilio Gerardo Maturana Gonzalez, believed to be one of the "disappeared" of the Pinochet regime in Chile. "Their personal story and history touched me," says Hugo Leal-Neri, now a J.D. student at the law school. "It spoke to so much of what I care about in terms of a violent regime's transition to accountability."

When Carolina approached International Human Rights Clinic (IHRC) director Noah Novogrodsky to take on the family's case, Hugo was the first person Novogrodsky thought of to ask for help. A seasoned lawyer originally from Mexico, Hugo recently completed his LL.M. research on Mexico's efforts to come to terms with its own past, particularly the repression of the student and guerilla movements of the 1960s and 1970s. Hugo readily agreed to work on the case pro bono.

Carolina's and Ricardo's tragedy began in the Chile of the 1970s. Dictator General Augusto Pinochet was in power, all leftist parties had been outlawed, and a state of siege existed. (Pinochet would hold absolute power until 1990.) Carolina recalls the day in 1976 when her husband, Luis Maturana, went missing. "I was told he had been kidnapped and was presumed tortured and murdered," said Carolina. Mr. Maturana's remains have never been found.

Carolina Gajardo and her son, Ricardo Maturana, inside *Santiago's La Moneda,* the Chilean government palace

(L-R): Student Hugo Leal-Neri, Ricardo, Carolina and relatives of Luis Maturana, in front of the memorial wall to honour those killed during the Pinochet dictatorship. Luis' name appears on the memorial.

Among such abuses now documented during the Pinochet scourge were the detention and interrogation under torture of approximately 45,000 individuals on the basis of their alleged political beliefs, of which at least 2,279 were murdered or disappeared. Families and communities were forced by the Pinochet regime into years of silence about their losses.

After working inside Chile on behalf of relatives of the disappeared, Carolina escaped to Canada with her son in 1989. Today, their goal is profoundly simple, yet difficult to achieve: to have the current Chilean justice system acknowledge, in a court of law, their right to know what happened to Luis Maturana, and to provide information on his fate.

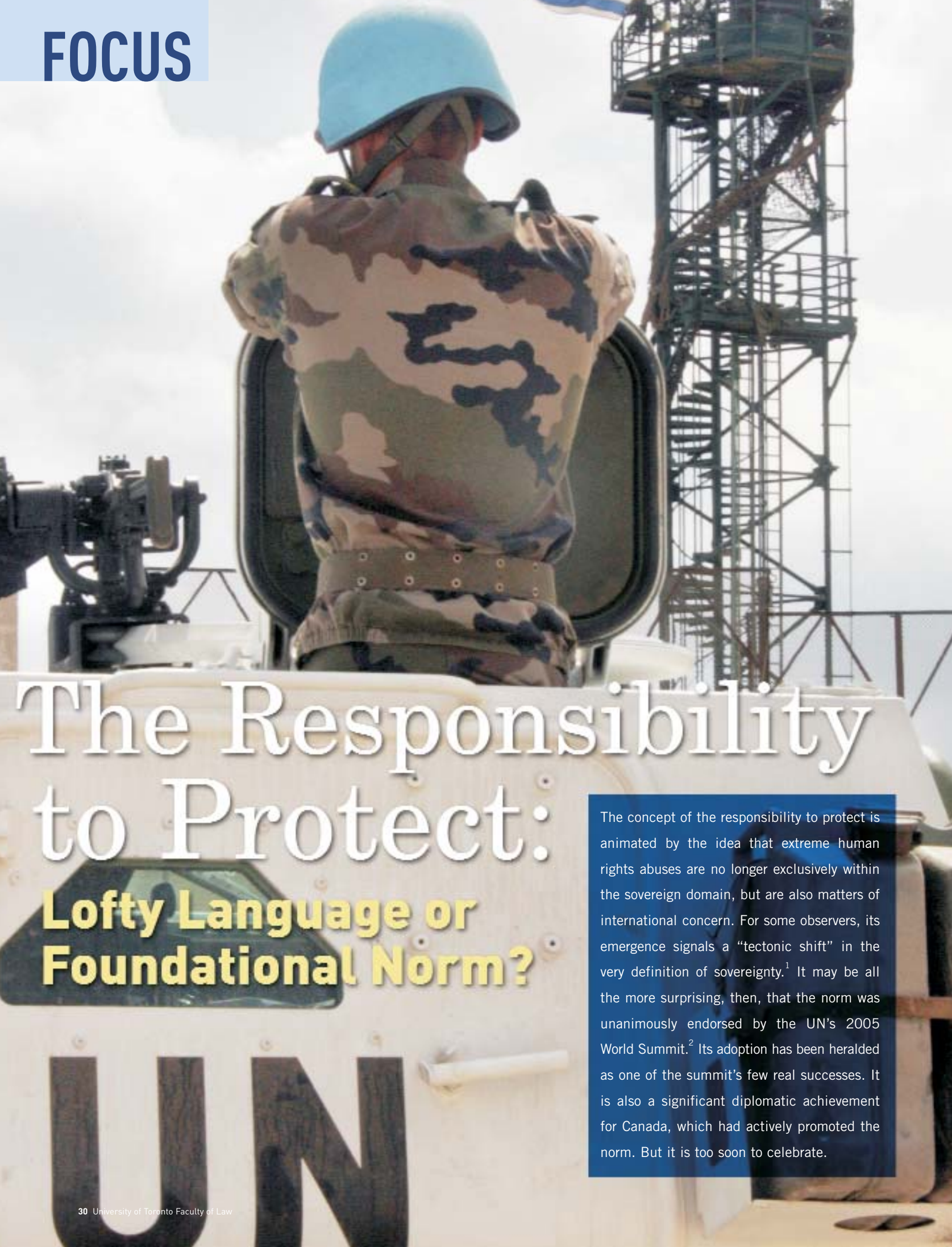
To further their case, Hugo traveled to Santiago in 2006 to finalize the criminal complaint. He worked intensively to establish the precedents in international, inter-American and current Chilean law that would bolster the case. Hugo then gave the complaint to a top Chilean human-rights lawyer, representing the family in Santiago, who then filed the complaint before the courts.

"We have endured terrible lies and disappointment about Luis," says Carolina. "Hugo's and the clinic's research has already given us so much more information, in their two years of work, than we have had in all the years before."

During the Santiago trip, Hugo's presence as an international intervenor, on behalf of the clinic and the family, also resulted in Carolina's and Ricardo's meetings with government officials and with the judge who will ultimately hear the criminal case. While Carolina awaits a court date in Santiago, local investigations have finally begun.

Today, Carolina dedicates her life to helping refugees to Canada. "The clinic and Hugo have opened a door to us – the dimensions of that door, of that hope, cannot be measured." ■

By Lisa E. Boyes



The Responsibility to Protect:

Lofty Language or Foundational Norm?

The concept of the responsibility to protect is animated by the idea that extreme human rights abuses are no longer exclusively within the sovereign domain, but are also matters of international concern. For some observers, its emergence signals a "tectonic shift" in the very definition of sovereignty.[1] It may be all the more surprising, then, that the norm was unanimously endorsed by the UN's 2005 World Summit.[2] Its adoption has been heralded as one of the summit's few real successes. It is also a significant diplomatic achievement for Canada, which had actively promoted the norm. But it is too soon to celebrate.

BY PROF. JUTTA BRUNNÉE*

The relatively rapid evolution of the concept of the responsibility to protect was driven in large part by extreme human rights crises in certain states, and by the failure of the world community to prevent further atrocities from being perpetrated upon civilian populations. The Rwandan genocide encapsulates this failure, but it is not a unique case, as the horrors of Cambodia, Zaire/Congo, Liberia, Sierra Leone and Darfur attest. The immediate spark for concerted efforts to elaborate the concept of responsibility to protect, however, was provided by the NATO intervention in Kosovo in 1999. It raised again the fundamental questions whether or not a right of humanitarian intervention existed and, if so, who could invoke it, only the Security Council or individual states? Shortly after Kosovo, Canada, one of the participants in the intervention, promoted the creation of an independent International Commission on Intervention and State Sovereignty (ICISS).

In its articulation of the responsibility to protect, the ICISS sought to transcend the intractable debates over rights to humanitarian intervention.[3] The responsibility to protect was not about rights at all, but about duties. The primary duty holder was the sovereign state, which should offer security and protection to its own citizens. The report emphasized the overriding importance of a wide spectrum of proactive measures and assistance to local governments in discharging their responsibility to protect, as well as the importance of non-military forms of pressure. But it also offered a set of carefully crafted threshold criteria for recourse to collective military action where there was "serious and irreparable harm occurring to human beings, or imminently likely to occur." The triggering events were "large scale loss of life … with genocidal intent or not, which [was] the product either of deliberate state action, or state neglect, or inability to act, or a failed state situation," or "large scale ethnic cleansing." In such cases, collective military action could be authorized internationally to protect victims within a sovereign state. To guide decisions on military action, the ICISS outlined a "just cause threshold," a set of "precautionary principles," and criteria for "right authority."[4]

The ICISS report was released shortly after the attacks of September 11, 2001.[5] The sensitivity of its recommendations was further increased by the intervention in Iraq, led by the United States and Britain without authorization by the Security Council. By November 2003, the worry over the lack of agreement "on the proper role of the United Nations in providing collective security" prompted the UN Secretary General to create the High-level Panel on Threats, Challenges and Change. The panel's report was published in December 2004.[6] The report drew extensively on the ICISS recommendations. It endorsed "the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort," as did the Secretary-General in his response to the panel's report.[7]

THE concept survived the difficult negotiations that preceded the adoption of the 2005 Summit Outcome document, but a number of significant shifts in emphasis had occurred along the way. The document describes the responsibility to protect as primarily a responsibility of individual states to protect their own populations. In addition, states are only called upon to protect their populations from "genocide, war crimes, ethnic cleansing and crimes against humanity." There is a role for international society, but it is first to "encourage and help States" to exercise their responsibility to protect their own people, and secondly to "use appropriate diplomatic, humanitarian and other peaceful means…to help protect populations." The Security Council is authorized to take collective protection action under Chapter VII of the UN Charter on a "case by case basis" and "should peaceful means be inadequate and national authorities manifestly fail to protect their populations" from the listed international crimes. The member states did not take up the earlier recommendations to develop more specific criteria for military intervention. The document contains only a charge to the General Assembly to "continue consideration of the responsibility to protect… and its implications, bearing in mind the principles of the Charter and international law."

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Given the potential impact on sovereignty, it is not surprising that, in agreeing to its inclusion in the Outcome document, many states sought to limit the ambit of the responsibility to protect. For ICISS, the responsibility to protect created a clear "responsibility continuum" that comprised action to prevent, to react, and to rebuild. The use of force was a final step, taken only *in extremis*. Although the Outcome document retains some flavour of prevention, its language in this respect is extremely cautious. There are only general statements that the "international community should…encourage and help states to exercise [their] responsibility," "support the United Nations in establishing an early warning capability," "use… peaceful means… under Chapters VI and VIII…to help protect populations," and to help "States build capacity to protect their populations." Presumably, this language was designed to assuage the concerns of

Given the potential impact on sovereignty, it is not surprising that, in agreeing to its inclusion in the Outcome document, many states sought to limit the ambit of the responsibility to protect.

many developing countries that the responsibility to protect could lead to an overly active and interventionist United Nations, or even to interventions by individual states without Security Council approval.

OTHER limitations on the concept of the responsibility to protect were negotiated into the Outcome document as well. The key limitation is that all responsibilities are triggered only in relation to international crimes. This has at least three significant implications. First, while great emphasis is placed upon the primary responsibility of individual states to protect their populations, this responsibility applies only to the limited class of international crimes, though in this context "protection" arguably includes prevention. Second, the possibility for collective intervention also exists only in the relatively narrow circumstances of international crime. This effect was probably intended, at least from the perspective of developing states, to prevent a resurrection of the "civilizing mission" of nineteenth century international law.[8] Third, if the duty of potential intervenors to act is limited to cases of "international crime," it is left open whether there is any duty to act collectively in situations where massive human rights violations do not reach that threshold or if they have not yet occurred. Significantly, the Outcome document not only limits the trigger to international crimes, but it also requires the actual commission of the crimes, not the threat.

Leaving aside the issue of limitations on the scope of the responsibility to protect, the very creation of any set category of offenses that might justify collective military action can have both positive and negative effects. A possible benefit is that reliance on a fixed category of relatively well established international crimes might prevent sterile definitional debates. But such debates may simply be displaced to the next level of specificity. The requirement that an international crime has already taken place necessitates a legal assessment, which is likely to generate a heated and protracted debate that could actually delay response. In the case of genocide, one of the triggering crimes, we already know that disagreements over the question whether the facts fit the definition have stymied action on a number of occasions. And recognition that a crime exists will not necessarily lead to action, as the Rwanda case so sadly demonstrated.

FINALLY, what are the implications of the UN Summit's failure to endorse specific criteria for decision-making on the use of force by the Security Council? If the Council continues to suffer from a legitimacy deficit, any actions it takes in furtherance of the responsibility to protect may actually undermine the norm. The adoption of transparent criteria might have been one way to enhance the legitimacy of its decisions even in absence of institutional reform. But there is also a potential risk in this approach. If criteria were to be agreed upon against which the decision to use force to protect suffering populations must be

The simple fact that the concept of responsibility to protect is included in the Outcome document does not prove the existence of a norm that is genuinely embraced by international actors

justified, they would also become a test against which Security Council *inaction* could be measured. The implication is that unilateral action might well be further legitimated.

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On balance, and given the challenge to sovereignty contained in the responsibility to protect, it is difficult to dismiss the Summit Outcome Document as mere "cheap talk."[9] The stakes were too high, and the implications fundamental. The efforts to modify and limit the concept suggest that some states believe that the responsibility to protect actually means something – or at least that it could mean something if they are not careful to constrain the concept now. These states may believe that the limitations negotiated preclude the further evolution of a robust responsibility to protect. For other states, the central goal will be to strike the appropriate balance between sovereignty and intervention. These states would not want to disable the responsibility to protect completely, but they might want to further qualify and limit its application.

The simple fact that the concept of responsibility to protect is included in the Outcome document does not prove the existence of a norm that is genuinely embraced by international actors, therefore having the capacity to influence behaviour. For the moment, the responsibility to protect is only a candidate norm in international relations. The need for a continuing commitment to norm entrepreneurship is implicit in the process that led up to the adoption of the responsibility to protect by the 2005 Summit. So far, the norm has been articulated in expert reports, in the response of the UN Secretary-General and in the final statement of an international gathering of heads of state and government. It has never been included in a binding normative instrument. Nor does state practice support the conclusion that the responsibility to protect has emerged as a rule of customary international law. Indeed, it is worrisome that in the Darfur crisis, which has continued to unfold since the articulation of the responsibility to protect, states have so far evaded any effective action to stop what is at least ethnic cleansing and may amount to genocide.

AT this stage, it is not at all clear that the concept of responsibility to protect will fulfill its promise. It may prove to be a mere rhetorical flourish. The essential point is that international norms are built. To exist and to be effective they require the prior development of shared understandings that often result from processes of persuasion. Its inclusion in the 2005 Outcome document was the result of tough negotiations. The promoters of the concept, including Canada, must now direct their energies to *persuading* reluctant states that the responsibility to protect meets a real need in international relations. This effort will also require the continuing engagement of civil society actors. The hard work of international law has only just begun. ■

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* This essay draws on Jutta Brunnée & Stephen J. Toope, "Norms, Institutions and UN Reform: The Responsibility to Protect," (2005) 2 *Journal of International Law & International Relations* 121. Jutta Brunnée is Professor of Law and Metcalf Chair in Environmental Law at the Faculty of Law, University of Toronto. Stephen J. Toope is Professor of Law and President of the University of British Columbia.

1 Anne-Marie Slaughter, "Security, Solidarity, and Sovereignty: The Grand Themes of UN Reform," (2005) 99 *American Journal of International Law* 619, at 627.

2 UN General Assembly, *2005 World Summit Outcome,* UN Doc A/RES/60/1 (24 October 2005); at www.un.org/summit2005/documents.html.

3 See e.g. J. L. Holzgrefe & Robert O. Keohane, eds., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2003).

4 For a detailed discussion, see Jutta Brunnée & Stephen J. Toope, "Slouching Towards New Just Wars: International Law and the Use of Force after September 11," (2004) LI *Netherlands International Law Review* 363.

5 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect,* December 2001; at www.dfait-maeci.gc.ca/iciss-ciise/report-en.asp.

6 *A more secure world: our shared responsibility,* Report of the High-level Panel on Threats, Challenges and Change, UN Doc. A/59/565 (29 November 2004); at www.un.org/secureworld.

7 *In Larger Freedom: Towards development, security and human rights for all,* Report by the Secretary-General, UN Doc. A/59.2005 (21 March 2005); at www.un.org/largerfreedom/.

8 See generally Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge: Cambridge University Press, 2002).

9 See Thomas Risse, "'Let's Argue!' Communicative Action in World Politics," (2000) 54 *International Organization* 1, at 8.

Student LAURA HAGE

helps bring justice to young Canadian in Cambodia

From conducting research on sexual exploitation in South East Asia, to attending bar raids, to rescuing exploited minors in Guatemala City, Laura Hage's first year at law school was jam-packed with international experience. A law school internship and the Faculty's International Human Rights Program (IHRP) offered her these opportunities. But it was her experience in second year that was the most meaningful for Laura, now in third year.

Through the program's International Human Rights Clinic, Laura worked with a student team to help a young Canadian woman, Hannah (a fictitious name), who was raped in Cambodia by a local military policeman in spring 2004. "I could relate strongly to Hannah as another young Canadian," says Laura. "I have also traveled several times to Cambodia myself as a student, just as Hannah did, and I know the beach where this happened to her. When I heard about her case, I had to do something to help."

Hannah's own courage and sense of justice brought her back to Cambodia to retain legal counsel locally and to ensure that the accused was prosecuted. The accused was convicted in September 2004 but appealed the ruling to the Cambodian Supreme Court. The appeal was heard in Phnom Penh in March 2006.

Laura got involved at the pre-appeal stage. Along with the clinic team, Laura conducted legal research from Toronto on the Cambodian judicial system and kept in regular contact with Hannah's on-site counsel to provide information to strengthen the case.

Laura also returned to Cambodia to provide in-country assistance. There, Laura shadowed the New Zealand lawyer who was advising the local NGO, the Cambodian Defenders' Project (CDP). CDP lawyers were representing Hannah on the appeal challenge. Laura was brought face-to-face with these Cambodian lawyers, with Canadian government and diplomatic officials, and with what she calls "the politics of influence" in a developing country. She also spent a great deal of time with Hannah herself, witnessing her determination and her struggle to address the local lawyers, and what had happened to her, through an interpreter.

It was an eerie experience for Laura to return to Cambodia, a country she loves, this time as a law clinic participant. Laura says, "Working on Hannah's file, I learned a great deal about client counseling and pre-trial prepping. My time in Cambodia confirmed how important it is to be on the ground if you want to see results."

The appeal was ultimately denied and the original sentence of 15 years in prison, upheld. Sarah Perkins, Acting Director of the International Human Rights Program, says, "The IHRC can play a valuable role in this type of case, not only through the provision of comparative legal research, but also by drawing public attention to cases through our physical presence on the ground. Laura was able to strengthen our advocacy on Hannah's behalf and contribute to this important legal victory."

Today, Laura stays in touch with Hannah, who is now herself pursuing a law degree in Canada and writing a book about her experience. ■

By Lisa E. Boyes

Rule of Law Reform and Development

BY PROF. MICHAEL TREBILCOCK

In a widely cited 1998 paper, "The Rule of Law Revival," Thomas Carothers, of the Carnegie Endowment for International Peace, states: "One cannot get through a foreign policy debate these days without someone proposing the rule of law as a solution to the world's troubles… Yet its sudden elevation as a panacea for the ills of countries in transition from dictatorships or statist economies should make both patients and prescribers wary. The rule of law promises to move countries past the first, relatively easy phase of political and economic liberalization to a deeper level of reform, but that promise is proving difficult."

Reflecting the optimistic perspective on rule of law reform in development, from the early 1990s to the present day there has been a massive surge in development assistance for law reform projects in developing and transition economies involving investments of many billions of dollars. The World Bank alone reports that it has supported 330 rule of law "projects" and spent $2.9 billion on this sector since 1990. Reflecting the more pessimistic perspective hinted at by Carothers, according to the World Bank's governance data on the status of the rule of law in many countries throughout the world, only three out of eighteen Latin American countries had positive rule of law ratings in 2002 and between 1996 and 2002 in many cases ratings deteriorated. In Sub-Saharan Africa, only six out of forty-seven countries had positive rule of law ratings in 2002 and many ratings, again, deteriorated between 1996 and 2002. In all twelve countries of the former Soviet Union, ratings were negative in both years. Asia, with its huge diversity of countries, presents a much more mixed picture, defying ready generalizations, although rule of law ratings are generally low, with notable exceptions such as Singapore and Hong Kong.

WHERE THE POLITICAL LEADERSHIP ESTABLISHES ANY SORT OF LASTING FOOTHOLD, IT WILL ALMOST INVARIABLY HAVE COMPLEX WEBS OF SUPPORT IN MILITARY, ADMINISTRATIVE, OR JUDICIAL BRANCHES OF GOVERNMENT

ONE of the first challenges to be confronted in addressing the issue of rule of law reform in developing countries is defining exactly what we mean by the rule of law. Debates over the content of the concept of the rule of law have a long and tangled intellectual pedigree. Some conceptions of the rule of law are relatively parsimonious and emphasize procedural characteristics of countries' legal systems of the kind associated with Western notions of due process and natural justice. One such definition emphasizes the accountability of transparent government decisions (including judicial responses to private law suits) to predetermined standards applied by an independent body, probably a court, through a procedure that can be practically utilized by the aggrieved. Much more ambitious conceptions of the rule of law espouse substantive notions of justice in a wide variety of areas of law and largely equate the rule of law with a just legal system, or even a just society or equate the rule of law with a full-blown liberal democracy.

Even adopting a relatively parsimonious, procedurally-oriented conception of the rule of law, the empirical evidence suggests that many developing countries, despite very substantial external assistance, have encountered formidable difficulties in undertaking successful reforms with respect to institutions such as the judiciary, prosecutors, the police, specialized law enforcement agencies such as tax administration, access to justice, bar associations, and legal education institutions. A reasonable hypothesis is that impediments to rule of law reform in developing countries fall principally into three somewhat crude and overlapping categories. First, impediments might be broadly described as of a technical or resource-related character, where despite political will on the part of their leadership and citizens to enhance the quality of the rule of law in their country, poor countries simply lack the financial, technological, or specialized human capital resources to implement good institutions generally, including legal institutions, thus impairing their development prospects, in turn making them poorer and in turn further diminishing their ability to implement good institutions, hence a vicious downward spiral. A second class of impediment relates to a variety of factors that might loosely be placed under the rubric of social-cultural-historical factors that have yielded a set of social values, norms, attitudes or practices that are inhospitable to even a limited procedural conception of the rule of law. A third class of potential impediments to effective implementation of rule of law reforms might be loosely characterized as political economy-based impediments, where lack of effective political demand for reforms, on the one hand, and vested supply-side interests on the other, render these reforms difficult to realize even if, by assumption, they would render most citizens better off in terms of their own values. Because a procedurally-oriented conception of the rule of law has many of the characteristics of a public good, diffuse citizen commitment to the rule of law is unlikely to translate into effective political mobilization for reforms, while concentrated supply-side interests that benefit from dysfunctional legal institutions, both in the public and private sectors, have strong incentives to resist reforms.

WHILE a review of the empirical experience of rule of law reform in developing countries over the past fifteen or twenty years reveals that all three of these impediments often have salience, identifying which impediment is of most salience in particular contexts has important implications for the role of the external community in promoting rule of law reform in developing countries. If the principal impediment is resource constraints, then the international community, particularly developed countries and multilateral agencies, should commit themselves to providing significant additional resources either in cash or in kind (through the provision of technical assistance), on the

assumption that a committed political leadership and general citizenry will allocate these resources to rule of law reforms in ways that are likely to be most appropriate and effective in the context in question. Where the second class of impediments is most salient, the role of the external community is much less clear, and prospects for successful intervention through forms of support or inducement are much less encouraging. While one should not assume that deeply entrenched or long-standing social, cultural, and historical values, beliefs and practices are immutable to change over time, acknowledging the mechanisms for promoting such changes is not always straightforward nor is the process of change likely to be anything but protracted. With respect to the third category of impediments to rule of law reform, political economy considerations suggest a constructive role for the international community in supporting and strengthening domestic political constituencies that are committed to rule of law reform agendas.

IN formulating such a strategy with respect to this third class of impediments to rule of law reform in developing countries, it is probably useful to identify certain basic stylized political formations in developing countries that are relevant to a realistic rule of law reform agenda. The first, and admittedly rare, stylized formation is characterized by an environment of broad political support for the rule of law both at the level of political elites and at the level of the general citizenry (for example, the administration of Nelson Mandela in post-apartheid South Africa). The second stylized formation is more ambiguous in its support for rule of law reform and is marked by a strong desire for rule of law reform at the highest political levels but more systematic opposition from a variety of complex economic and social relationships operating below the political surface, often reflecting powerful public or private interests with a stake in a general state of lawlessness (for example, the administration of Gorbachev in Russia). The third stylized formation is marked by highly corrupt political leadership with strong incentives for maintaining the status quo and no predisposition to reform (for example, Robert Mugabe in Zimbabwe). In such states there may be varying degrees of organized popular opposition in the form of NGO or other civil society activity, and there may be some degree of opposition from or some tendency towards or pockets of reform within the leadership of some government factions or governing agencies. However, where the political leadership establishes any sort of lasting foothold, it will almost invariably have complex webs of support in military, administrative, or judicial branches of government, and often among some segments of the public.

Obviously, the first stylized political formation is the most congenial to rule of law reform and implies a willingness on the part of the international community to respond to requests for assistance in cash or in kind, but reflecting an agenda very much driven by the recipient country. The second stylized formation poses a somewhat greater challenge for the international community. Here a variety of policy instruments may need to be considered, including conditional aid, conditions to be met in accession negotiations relating to membership

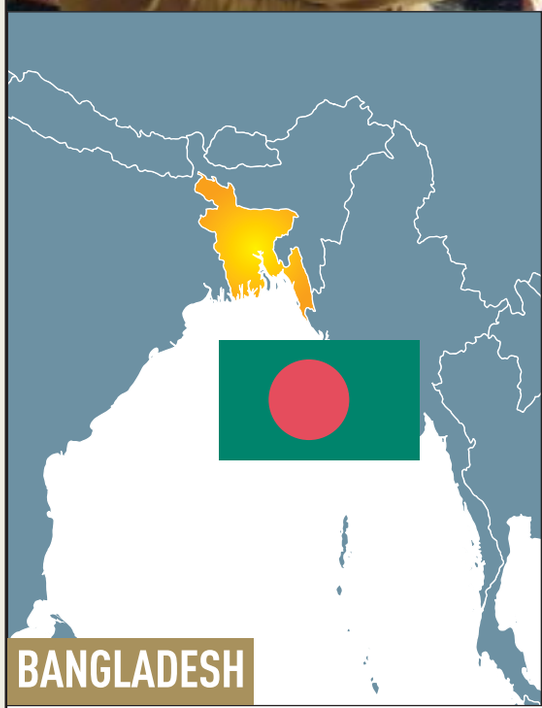
THE EXPERIENCE WITH RULE OF LAW REFORM EFFORTS IN DEVELOPING COUNTRIES OVER THE PAST FIFTEEN OR TWENTY YEARS SUGGESTS THAT THERE IS NOTHING AXIOMATIC ABOUT THE IMPORTANCE OF THE RULE OF LAW FOR MANY SOCIETIES

of important regional or multilateral economic or political associations, conditional trade preferences, or at the limit trade sanctions for gross violations of internationally recognized rule of law norms. With respect to the third stylized formation, the role of the international community may be highly circumscribed and may be largely limited to supporting the role of non-state actors in such countries, with a particular focus on those local and international NGOs developing reform initiatives independent of state agencies, and the provision of financial and technical assistance to them.

IN western developed countries, the importance of the rule of law is viewed as largely axiomatic. It is assumed that it serves important instrumental functions – for example, by protecting private property rights and ensuring enforcement of contracts it promotes investment and economic growth; by protecting basic civil and political rights it promotes basic human freedoms that are intrinsically valuable. Yet the experience with rule of law reform efforts in developing countries over the past fifteen or twenty years suggests that there is nothing axiomatic about the importance of the rule of law for many societies, either in terms of its ends or the means by which it can be advanced. This implies a continuing and long-term challenge both for citizens in these societies and the international community in promoting the rule of law in these societies. All the experience to date suggests that in many societies this will not be a battle that is quickly or easily won. ■

Student JUDITH RAE

helps save a Bangladeshi family in a life-or-death case



Few Canadians could imagine what Fazlul and Latifa, a Bangladeshi husband and wife now living and working in Canada, were facing in spring 2006, when they were told to pack their bags and leave the country. Nor was their plight the kind of case that first-year law student Judith Rae would have expected to take on.

"I didn't even think I was interested in immigration law," says Judith, "but when I was placed on the 'immigration shift' at the Faculty's Downtown Legal Services (DLS) clinic as part of my studies, I encountered the most compelling case and the most desperate family imaginable."

The family, members of a Muslim sect, the Ahmadi, had experienced growing, violent persecution in Bangladesh – both for their religious beliefs and for Fazlul's courage, as a writer, to speak out against the attacks and threats. Sunni fundamentalists have also publicly called for his death. Fazlul and Latifa fled their homeland seven years ago with their first child. Their two other children are Canadian-born.

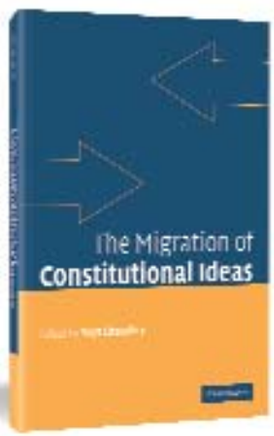
"At the point when I went over their case with my supervising lawyer, Amina Sherazee," says Judith, "the family was to be deported in 14 days. They had even considered the possibility of giving up their three young children to the Children's Aid Society, to keep them safe in Canada." Using prior external legal representation, Fazlul and Latifa had already filed a claim for refugee status, along with a pre-removal risk assessment (PRRA) and an application for permanent Canadian residence on humanitarian and compassionate grounds, known as an H&C. All three applications had been denied at the point when Judith met the couple.

As their DLS case worker, Judith felt she had little hope of being able to turn the situation around – but she did have determination, and it soon became clear that serious errors had been made in their previous applications and in the decisions on their claims. The unfortunate illness of the couple's youngest child helped Judith and DLS negotiate a series of extensions on the stay of the family's removal. Meanwhile, she and Amina Sherazee amassed a "mountain of evidence" lacking in the original documents. They filed in federal court for Judicial Review of two of their previously rejected applications. They also submitted two new immigration applications, a new PRRA and a new H&C.

As a result of Judith's and DLS' efforts, it now looks as if the family has been pulled back from the brink of disaster: their H&C application has been accepted in principle, and they are able to pursue care for their baby. Once final, the H&C will likely grant them status as permanent residents in Canada.

As to how Fazlul and Latifa could end up so close to the wire, Judith comments: "This is a well-educated, hard-working family fluent in English. But, first, the Immigration and Refugee Board didn't have factual knowledge of the Ahmadi sect, which led to serious mistakes; parts of the family's claim needed more support; and Fazlul and Latifa didn't have the kind of legal help they needed until now. It goes to show how important clinics like DLS are." ■

By Lisa E. Boyes



THE MIGRATION OF CONSTITUTIONAL IDEAS

Edited by Professor Sujit Choudhry

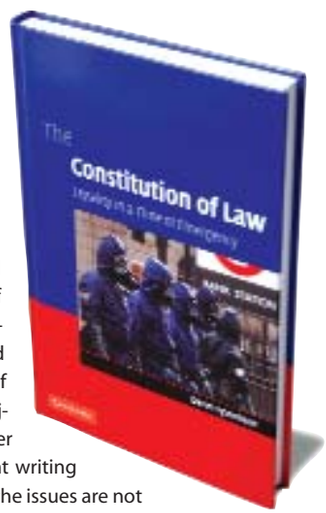
ISBN: 9780521864824
Publisher: Cambridge University Press
Suggested retail price: $90.00 (HC)

FROM THE PUBLISHER: The migration of constitutional ideas across jurisdictions is rapidly emerging as one of the central features of contemporary constitutional practice. The increasing use of comparative jurisprudence in interpreting constitutions is one example of this. In this book, leading figures in the study of comparative constitutionalism and comparative constitutional politics from North America, Europe and Australia discuss the dynamic processes whereby constitutional systems influence each other. They explore basic methodological questions, which have thus far received little attention, and examine the complex relationship between national and supranational constitutionalism – an issue of considerable contemporary interest in Europe. The migration of constitutional ideas is discussed from a variety of methodological perspectives – comparative law, comparative politics, and cultural studies of law – and contributors draw on case studies from a wide variety of jurisdictions: Australia, Hungary, India, South Africa, the United Kingdom, the United States, and Canada.

THE CONSTITUTION OF LAW: LEGALITY IN A TIME OF EMERGENCY

Professor David Dyzenhaus

ISBN: 9780521860758
Publisher: Cambridge University Press
Suggested retail price: $80.00 (HC)

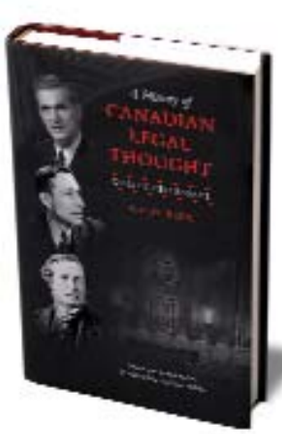


FROM THE PUBLISHER: Professor Dyzenhaus deals with the urgent question of how governments should respond to emergencies and terrorism by exploring the idea that there is an unwritten constitution of law, exemplified in the common law constitution of Commonwealth countries. He looks mainly to cases decided in the United Kingdom, Australia and Canada to demonstrate that even in the absence of an entrenched bill of rights; the law provides a moral resource that can inform a rule-of-law project capable of responding to situations which place legal and political order under great stress. Those cases are discussed against a backdrop of recent writing and judicial decisions in the United States of America in order to show that the issues are not confined to the Commonwealth. The author argues that the rule-of-law project is one in which judges play an important role, but which also requires the participation of the legislature and the executive.

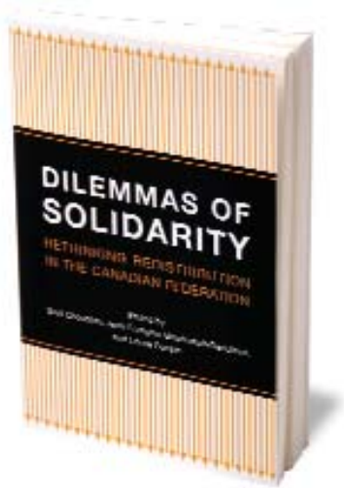
A HISTORY OF CANADIAN LEGAL THOUGHT: COLLECTED ESSAYS

Professor Emeritus R.C.B. Risk, edited and introduced by Professor Jim Phillips (with G. Blaine Baker)

ISBN: 0802094244
Publisher: University of Toronto Press
Suggested Retail Price: $65.00 (HC)



FROM THE PUBLISHER: This volume in the Osgoode Society's distinguished series on the history of Canadian law is a collection of the principal essays of Professor Emeritus R.C.B. Risk, one of the pioneers of Canadian legal history and for many years regarded as its foremost authority on the history of Canadian legal thought. Frank Scott, Bora Laskin, W.P.M. Kennedy, John Willis and Edward Blake are among the better known figures whose thinking and writing about law are featured in this collection. But this compilation of the most important essays by a pioneer in Canadian legal history brings to light many other lesser known figures as well, whose writings covered a wide range of topics, from estoppel to the *British North America Act* to the purpose of legal education. Written over more than two decades, and covering the immediate post-Confederation period to the 1960s, these essays reveal a distinctive Canadian tradition of thinking about the nature and functions of law, one which Risk clearly takes pride in and urges us to celebrate.

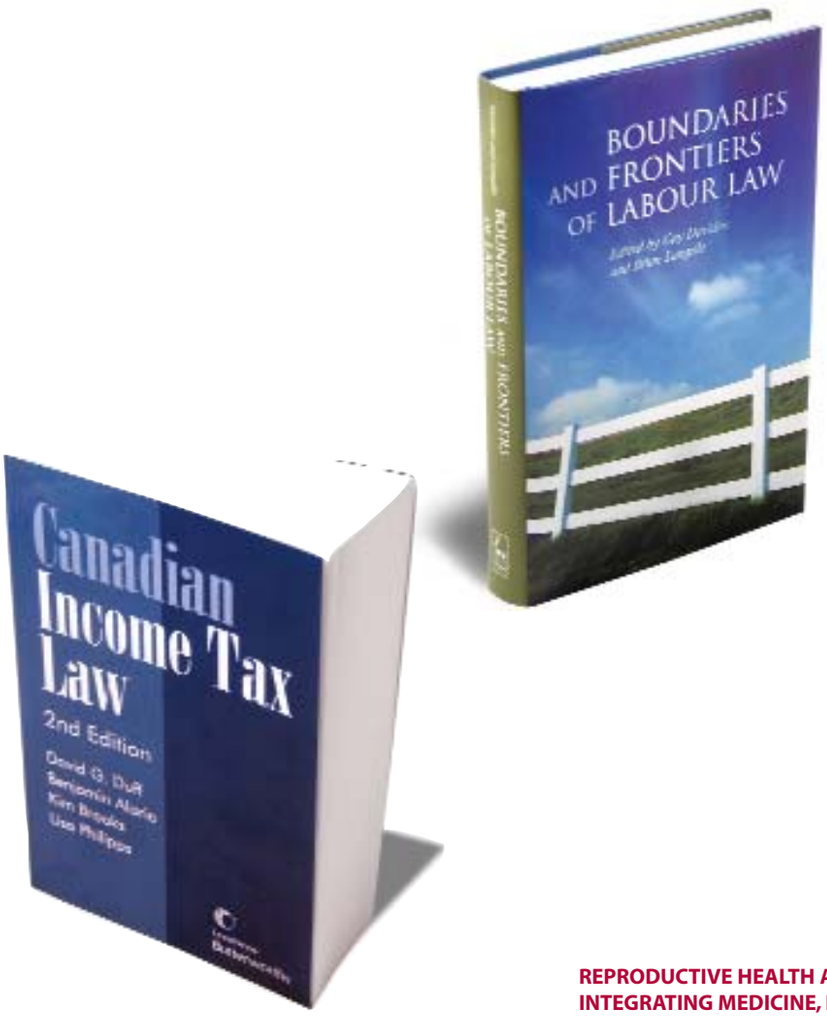


DILEMMAS OF SOLIDARITY: RETHINKING REDISTRIBUTION IN THE CANADIAN FEDERATION

Edited by Professors Sujit Choudhry, Jean-François Gaudreault-DesBiens and Lorne Sossin

ISBN: 0802091261
Publisher: University of Toronto Press
Suggested retail price: $55.00 (HC)

FROM THE PUBLISHER: Since the rise of the Canadian welfare state in the aftermath of the Second World War, the politics of social policy and fiscal federalism have been at the centre of federal-provincial relations. Recent events have given impetus for scholars to re-examine these issues. In 2002, the *Quebec Commission on Fiscal Imbalance* released its report, which introduced the term 'vertical fiscal imbalance' into the vocabulary of Canadian politics. Essentially, the commission determined that a disjunction between revenue-raising capacity and expenditures involving different orders of government – vertical fiscal imbalance – was an urgent problem that must be addressed. *Dilemmas of Solidarity* is both a reflection on and response to that finding. Editors Sujit Choudhry, Jean-François Graudreault-Desbiens, and Lorne Sossin bring together an array of respected legal and political scholars to reflect on the Quebec Commission's findings. The contributors to this volume illustrate how recent debates surrounding Canada's equalization program suggest alternative ways to approach the issue. The goal of *Dilemmas of Solidarity* is to stand back from the particulars of different policy debates, to enable scholars to reflect on basic questions regarding redistribution. This fascinating collection will undoubtedly inform a more nuanced and wide-ranging debate both among academics and policy practitioners than has occurred in this past.



BOUNDARIES AND FRONTIERS OF LABOUR LAW: GOALS AND MEANS IN THE REGULATION OF WORK

Edited by Professor Brian Langille and SJD graduate Guy Davidov

ISBN: 184113-595X
Publisher: Hart Publications, Oxford
Suggested retail price: $90.00 (HC)

FROM THE PUBLISHER: Labour law has always been preoccupied with boundaries. One can either be an "employee" or not, an "employer" or not, and the answer dictates who comes within the scope of labour law, for better or worse. But such divisions have always been difficult, and in recent years their shortcomings have become ever more pronounced. The proliferation of new work arrangements and heightened global competition have exposed a world-wide crisis in the regulation of work. It is therefore timely to re-assess the idea of labour law, and the concepts - in particular the age-old distinctions - that are used to delimit the field. This collection of essays, by leading experts from around the world, explores the frontiers of our understanding of labour law itself. Contributors include: Harry Arthurs, Paul Benjamin, Hugh Collins, Guy Davidov, Paul Davies, Simon Deakin, Mark Freedland, Judy Fudge, Adrin Goldin, Alan Hyde, Jean-Claude Javillier, Scilla Kollonay, Brian Langille, Enriqué Marin, Kamala Sankaran, Silvana Sciarra, Katherine Stone and Anne Trebilcock.

CANADIAN INCOME TAX LAW

Professors Benjamin Alarie and David Duff (with Kim Brooks and Lisa Philipps)

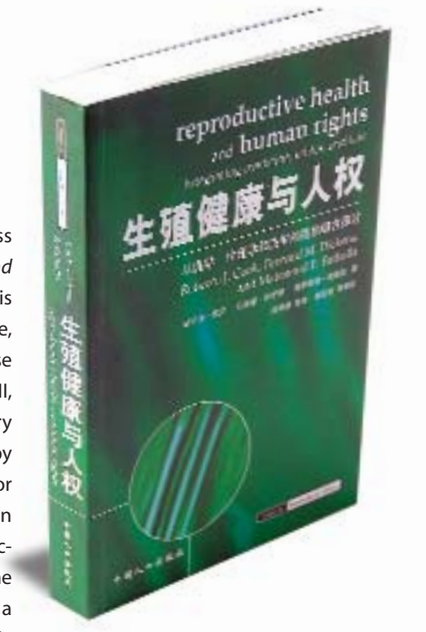
ISBN: 0 433 45416-4
Publisher: LexisNexis Butterworths Canada
Suggested retail price: $99.00

FROM THE PUBLISHER: This second edition provides an overview of the foundations of tax law and the critical cases that have shaped each component of the tax regime. Emphasizing both the legislative mechanisms and the common law tradition of tax enforcement, the authors of this well-established text set out the considerations one needs to keep in mind when advising clients. This new edition includes all statutory provisions and cases up to May 2006 and tax changes proposed in the 2006 Federal Budget. It also includes the latest commentary and case law on anti-avoidance rules, interest deductibility, the characterization of a taxpayers income or loss and valid expense deductions. Other features include a detailed index, key extracts from leading cases, rules relating to the computation of income and an analysis of the *Income Tax Act.*

REPRODUCTIVE HEALTH AND HUMAN RIGHTS: INTEGRATING MEDICINE, ETHICS AND LAW
(Chinese edition)

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

ISBN: 7-80202-167-7
Publisher: China Population Publishing House



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 Chinese, adding to the English, French, 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 update section for the book, on the Faculty of Law's Women's Human Rights Resources (WHRR) www.law-lib.utoronto.ca/ diana. Those interested in obtaining a copy should write to chinapphouse @163.net.

The Write Stuff

Literary Lawyers

BY KARINA DAHLIN

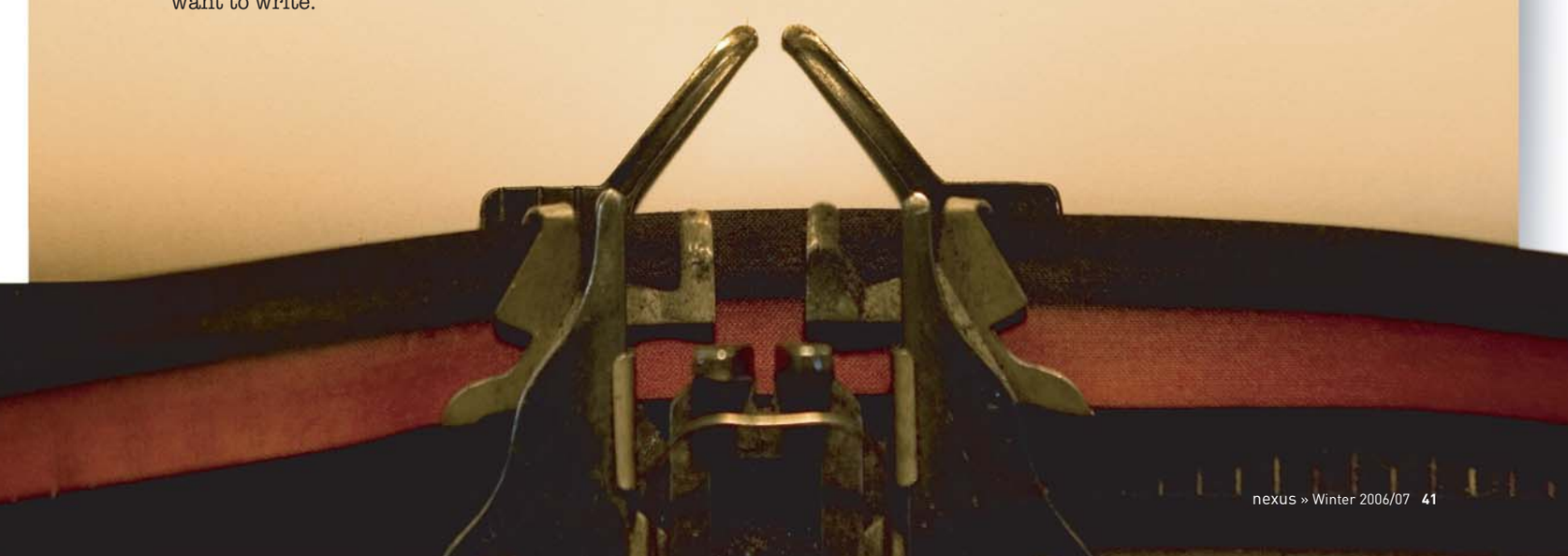
"My decision to become a lawyer was irrevocably sealed when I realized my father hated the legal profession," John Grisham is quoted as saying. Mission accomplished, he found his niche as an author, as did others trained in law, including Henry James, Scott Turow, Perri (Pamela) O'Shaughnessy – and a number of graduates of the Faculty of Law.

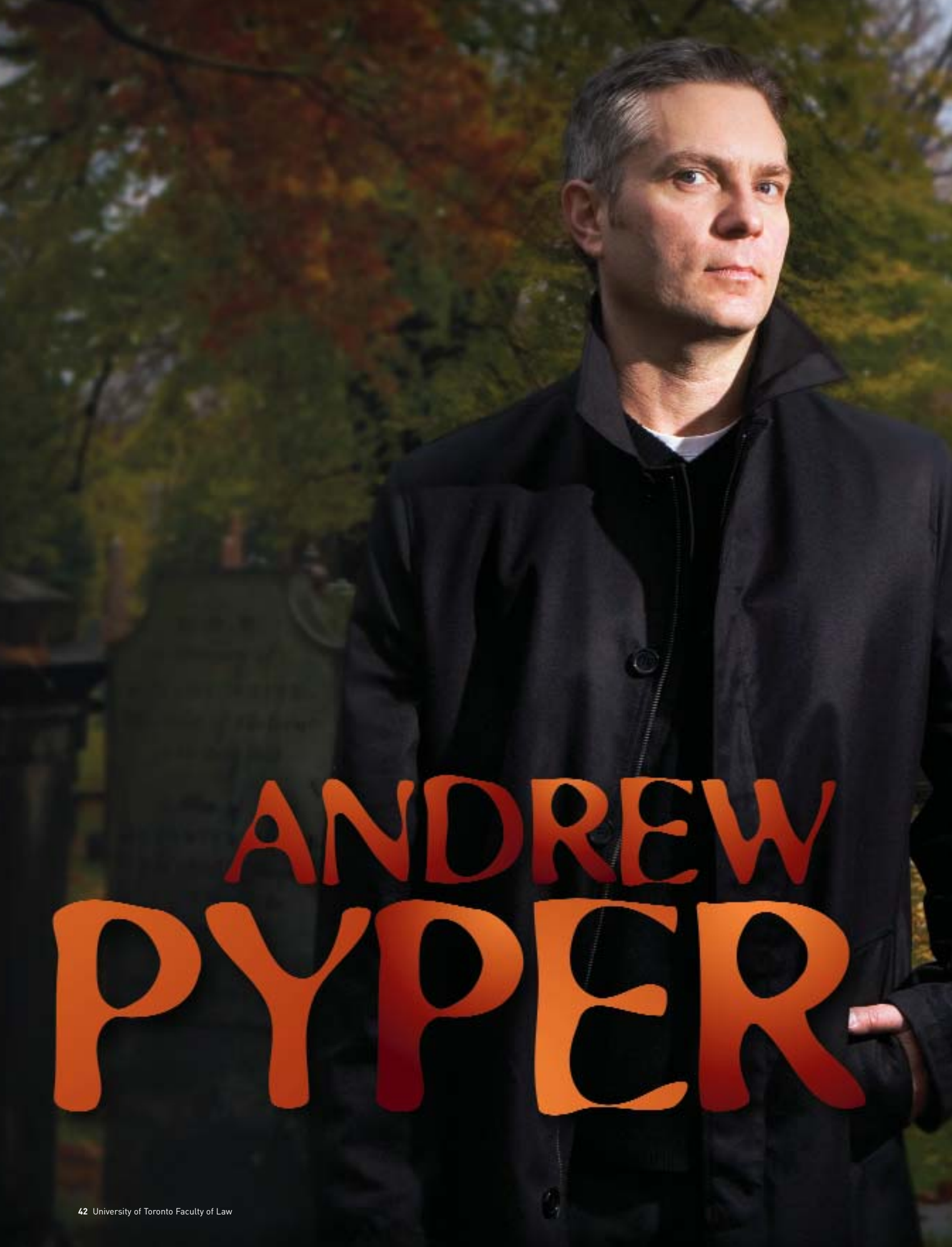
Andrew Pyper ('95), whose first novel Lost Girls arrived on the market to great fanfare in 1996, says there were always literary minded people in law school "probably because writing and law are about playing with words." He and the other four writers featured here – Jack Batten ('57), Naomi Duguid ('79), Guy Gavriel Kay ('78), and Judith McCormack (U of T's DLS Director) – do not regret attending law school. They learned to work in a disciplined fashion, they made some good friends, they're proud to be lawyers, and McCormack still practises. However, says Batten, "I didn't learn to write in law school. Lawyers in my day wrote pretty terribly, with some notable exceptions like former Supreme Court of Canada Justices Bertha Wilson and Brian Dickson."

Fiction writing is not the point of law school, of course. Students do learn a certain amount about technical legal writing, depending on the courses they take, says Dean Mayo Moran. She is quick to add, however, that the study of law itself is in many ways profoundly engaged in attentiveness to language and the implications of language. "It is a critical part of what we do," says Moran. "What we teach in law school is how to deal with language in ways that are persuasive, attentive and subtle. It's such a deep part of what we do as lawyers. All faculty members teach our students that, every day, in various ways."

Dean Moran studied English and taught English and theatre to high school students in the 1980s before she entered law school. She's an avid reader and so are most of her colleagues, she says. "Literature is full of insights for law. Many of us read widely because we love it but also because it helps us think about the kind of world that law shapes and the part that we play in it."

The Faculty's attention to language is evident. There's the Law and Literature book club series for alumni; the intensive course, Law, Language, and Literature; and this year the launch of the graduate program, Law and Literature, offered jointly with the Department of English. Students are excited about the new program, and who knows how many of them will be inspired to give writing a serious try. As McCormack says, "It's remarkable how many lawyers say they want to write."





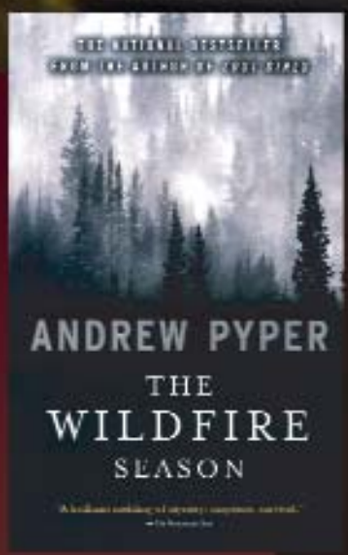
ANDREW PYPER

Law presented itself as "a reasonable option" to Andrew Pyper after he finished his master's degree in English at McGill University in 1992. His girlfriend at the time was a student at law and the two of them imagined sharing a practice and a life. Three months after he started his studies, the relationship ended and he was stuck, wondering if law school was the right place for him. However, a Presbyterian sense that you don't quit spurred him on, and in 1995 he graduated and earned a Legal Theory Award for good measure.

He was called to the bar in 1996, the same year he published his first book, a collection of short stories called *Kiss Me.* More than one of these stories started as sketches in the margins of his law school lecture notes, he recalls. "Taxation classes gave rise to some pretty good fiction." Indeed, his friends wondered how long the law would sustain his interest in class before he switched to creative writing. "Of course, I'd hit them up for notes after class," Pyper says. "Exam time was really tough but I'm a good panic learner."

Although he was proud to have earned his credentials as a lawyer, Pyper chose a different path, one that led him to Peterborough where another girl beckoned. The gothic feeling of the town inspired the mood of his first novel, *Lost Girls,* published in 1999 to rave reviews. "Andrew Pyper does for Northern Ontario what Charles Dickens did for the streets of London," said *Quill & Quire.* An article about the Pyper phenomenon in *The Scotsman* noted that "Andrew Pyper, 32 years old, has a huge new bestseller on his hands with his debut novel *Lost Girls* …. There has been much excitement, big international publishing deals, film rights being auctioned."

Meanwhile, Pyper met and married Heidi Rittenhouse (now Heidi Pyper), a Toronto arts administrator, and this year they had their first child. Work is pouring in, and life is sweet. Little wonder that others dream of switching careers. "There are a lot of manuscripts in secret shoe boxes in lawyers' closets," he says. "However, fiction writing requires the kind of obsession that makes weekend-only writing impossible. It's either/or, I think. And if you're looking for any financial security, stick to your day job. When the bank asks me what my annual salary will be next year, I have no idea. There's zero security in writing." ■



Andrew Pyper's first book, *Kiss Me,* is a collection of short stories published in 1996. His next book and his first novel was *Lost Girls* (1999), which became an international best-seller, with over half a million copies in print to date. The next psychological thriller was *The Trade Mission* (2002), which was selected as one of the 10 best books of the year by the *Toronto Star,* followed by *The Wildfire Season* (2005), picked as a book of the year by *The Vancouver Sun, Calgary Herald* and *The Globe and Mail.* He was writer-in-residence at Kitchener Public Library, Trent University, and at Berton House in Dawson City, Yukon, and taught at the U of T School of Continuing Studies. He is currently working on a book tentatively named *The Killing Circle,* and on several scripts for television and film. For more, see http://andrewpyper.com.

"Outstanding… Pyper's pacing is impeccable. A captivating book."

London Evening Standard (UK)

"...so fascinating it renders one virtually speechless."

Quill and Quire

Take one lawyer, give her a leave of absence, connect her with a young man riding his bicycle in Tibet, add generous helpings of curiosity and imagination, and you've got the foundation for an amazing series of books on culinary cultural journeys.

Naomi Duguid and Jeffrey Alford were described as "Canada's top travel cookbook writers" by BookTelevision last year. After 20 years of traveling, separately and together with their two sons, they've produced a series of books that offer painless recipes with friendly prose and vibrant photos that weave customs, geography, and history into engaging armchair travels.

Home is a row house just south of U of T, a place full of mementos from their travels with a herb garden that comes in handy when recipes are tested. Other ingredients they purchase in places like Chinatown and Indiatown. "Living in downtown Toronto is a continuum of our travels," says Duguid.

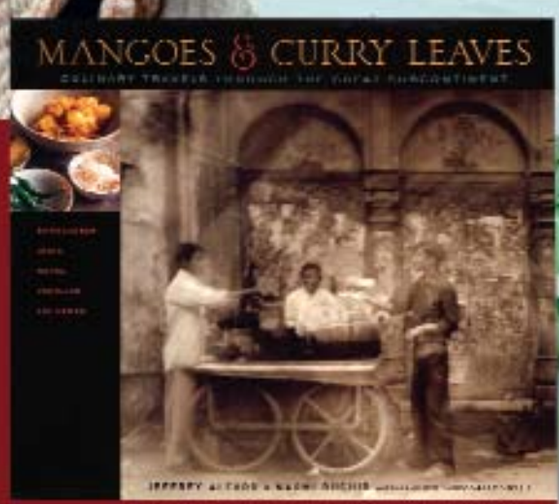
After completing an undergraduate degree in geography at Queen's, Duguid took up law studies at U of T. She was called to the bar in 1981 and worked as a labour lawyer in Toronto for four and a half years. Then she took a leave of absence to travel and realized she wanted to be out in the world asking questions. Alford, whom she met in Lhasa in 1985, was of the same persuasion. They first wrote pieces for bicycle magazines and food magazines before finding their niche in exploring food as culture.

"I didn't hate law," Duguid says. "If I had three lives, I'd spend one practicing law, but with only one, I chose to be out in the world with more time and less money."

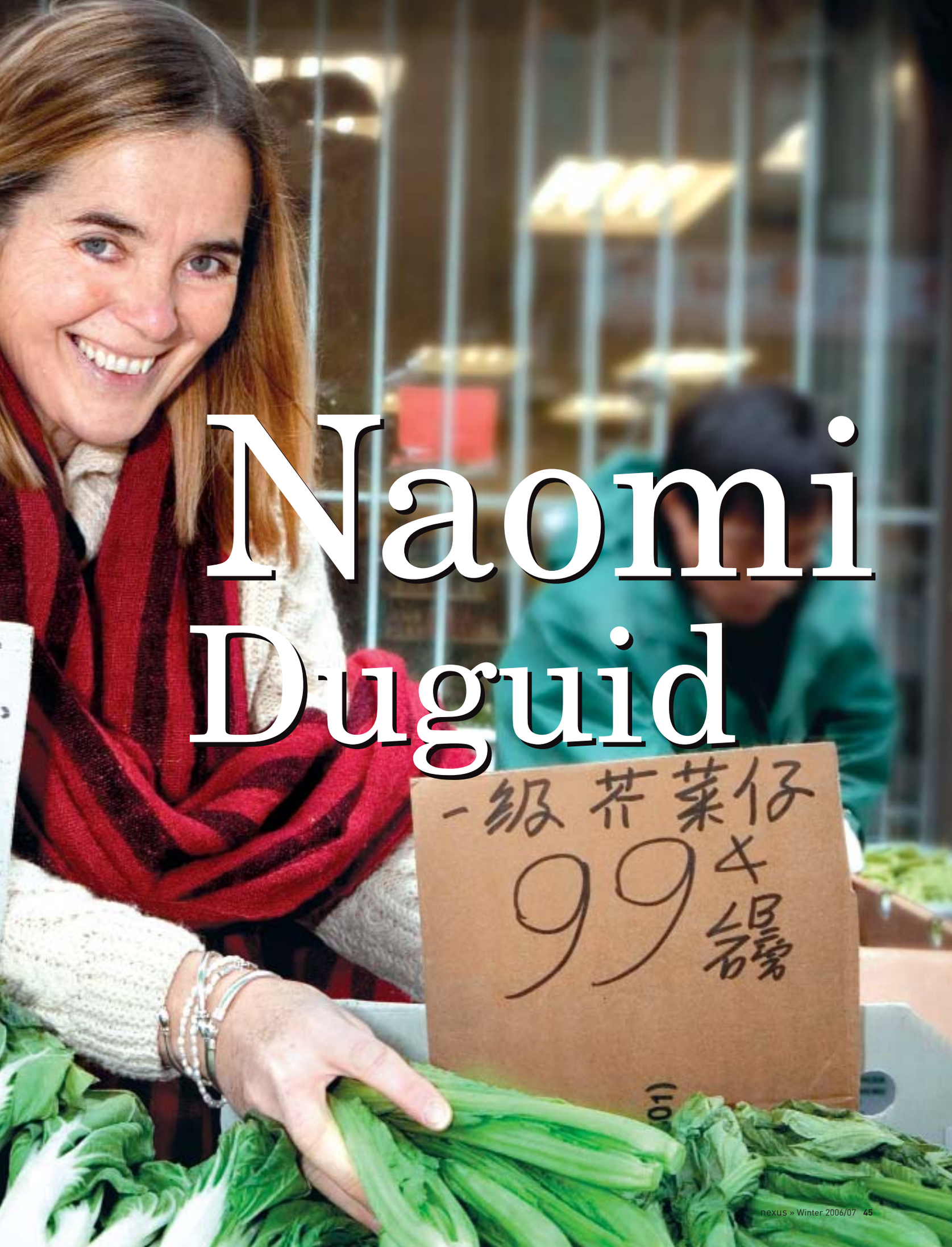
When she first started working on freelance articles her writing was "functional and distorted by lawyering," she says. "The ability to achieve 'lightness on my feet' on the page was an issue of confidence: the more you do it, the better you get at it. I think we all have creativity that we haven't been 'given permission' to explore. And it is painful being a beginner. While everyone else has a trajectory, you have no status."

In 2004 she was asked to speak to members of her class who assembled for their 25th anniversary dinner. "Afterwards some people told me they wanted to quit but didn't know how... Everyone is so hard on themselves, juggling jobs and expectations. My advice is, lower your costs, and take a break. It's much easier to live with grace when you don't have feelings of anxiety."

For more about Duguid's recipes for life and food, see www.hotsoursaltysweet.com. ■



Naomi Duguid and Jeffrey Alford's first book *Flatbreads and Flavors: A Baker's Atlas* (1995) was named James Beard Cookbook of the Year and won the Julia Child First Book Award. *Seductions of Rice* (1998) and *Home Baking: The Artful Mix of Flour and Tradition Around the World* (2003) both won Cuisine Canada English Language Cookbook awards. *Hot Sour Salty Sweet: A Culinary Journey through Southeast Asia* (2000) was also named James Beard Cookbook of the Year. Their most recent book *Mangoes & Curry Leaves: Culinary Travels Through the Great Subcontinent* (2005) won the Julia Child IACP award for best International Cookbook in 2006. Their next book, tentatively titled *Noodles and Tea: Culinary Travels Beyond the Great Wall,* is scheduled for publication in spring 2008.



Naomi Duguid

Guy Gavriel Kay

A lawyer's closing address to the jury is similar to a writer's completed book manuscript, says Guy Gavriel Kay, an internationally acclaimed author and poet. Both legal and literary professionals must be proficient in topics they've never thought about before, he explains over a cup of cappuccino at Tik Talk Café on Harbord Street. Lawyers need to learn quickly what's essential so they can cross-examine the real experts and draw some authoritative conclusions, and writers want to ensure that their stories make sense.

In his 25 years as an author, Kay has had to figure out what's essential about things like Byzantine mosaic, chariot racing in the sixth century, troubadours, and Viking ships. His readers around the world welcome his knowledge without question; had he stayed in law and appeared before a jury, the jurors would probably be equally persuaded by his expertise.

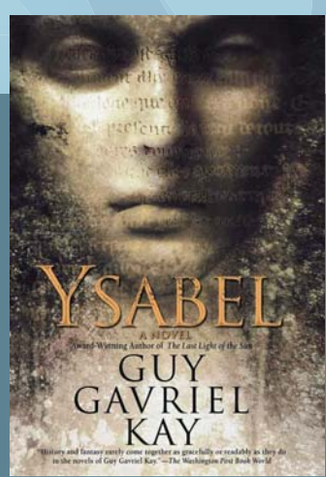
Kay had three distinct career aspirations as a child: to play right wing for the Toronto Maple Leafs hockey team, to become a lawyer, and to become an author. The hockey player took a back seat, and the author in him saw he had to do some living before he became a writer. Criminal law interested him, so he enrolled at U of T's Faculty of Law for the first and the third years, and spent second year at the University of Manitoba, in order to take the sophisticated litigation course created by Professor Gordon Dilts, and won the mock trial championships in Vancouver that year.

He graduated in 1978. At the gentle prompting of his father, he made one application for an articling position before he flew off to a Greek island to spend a year with his typewriter. "Much to my surprise my application landed me a position in Edward Greenspan's firm," he remembers. After completing his manuscript for a novel about Canadians backpacking in Europe (never published), he returned to do his articles. The dynamic lawyer and the aspiring writer discovered they had much in common, and both were actively involved in the award-winning series, *Scales of Justice,* produced by George Jonas, first for radio then for television.

Most of Kay's books were written in France but then his two children had to go to school, and the annual trips stopped. Last year the family returned to France for *Ysabel.* Kay and his wife, Laura Beth Cohen, would have stayed but the children, then 14 and 8, "threatened to row home," he grinned. Accordingly, his travels are limited to book tours and readings these days. His website at www.brightweavings.com includes announcements on *Ysabel* which is being published in January 2007. ■

"Historical fantasy of the highest order, the work of the man who may well be the reigning master of the form."
The Washington Post

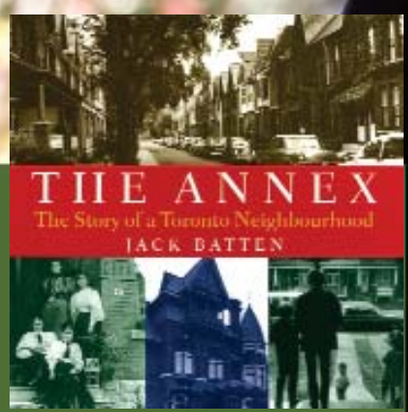
Guy Gavriel Kay is usually found under "Fantasy" in bookstores and libraries. He has published *The Fionavar Tapestry,* a trilogy that includes *The Summer Tree* (1984), *The Wandering Fire* (1986), and *The Darkest Road* (1986). *Tigana* is from 1990, followed by *A Song for Arbonne* (1992), *The Lions of Al-Rassan* (1995), and the two-volume *Sarantine Mosaic,* consisting of *Sailing to Sarantium* (1999) and *Lord of Emperors* (2000). *Beyond This Dark House* (2003) is the only collection of poetry he has published. *The Last Light of the Sun* is from 2004, and his most recent novel, *Ysabel,* was published in January 2007. He also writes essays, book reviews, speeches, commentaries, and scripts for television and film. Currently, he is adapting *The Last Light of the Sun* for Robert Chartoff Productions in Hollywood.



Jac Batt

"History is fetchingly well mined... the book has international appeal in the way that histories of other literary neighborhoods do."

Books in Canada



Jack Batten has written 34 books, hundreds of magazine and newspaper articles, and he was a movie reviewer for CBC Radio's Toronto morning show for 25 years. Four of his books are crime novels, among them *Straight No Chaser* (1989). *Tie Breaker* (1983) is a young adult novel. Five books deal with the legal profession: *Lawyers* (1980), *In Court* (1982), *Robinette* (1984), a biography of John Robinette, *Judges* (1986), and *On Trial* (1988). His sports books include *The Leafs* (1993; reprinted in 1999 and 2004); Nancy Greene's autobiography (1968), the first book he wrote; and *The Man Who Ran Faster Than Everyone,* a biography of Tom Longboat, which won the 2002 Norma Fleck Award for best children's nonfiction. *Canada Moves Westward* (1978) is a social history of Canada in the 1880s, one in a series of books about Canada in each of the decades. *The Annex – The Story of a Toronto Neighbourhood* was published in 2004. He is currently writing a book about the British nurse, Edith Cavell, a World War One heroine. It will be published in the fall.

Jack Batten makes people smile. Remember "Back to the Future" in *Nexus* in 2002, the piece in which he chronicled his return to law school for one day? "It is 3:40 on a recent autumn afternoon, and I'm sitting in Ernie Weinrib's first-year Torts lecture. I begin to feel a small ache in the centre of my forehead…" His style is clear and droll, and in person, he's no different. Let the good stories roll.

Batten went to law school because he was told to, and much to his amazement he made it and was called to the bar in 1959. But his heart wasn't in law.

"I knew I wanted to be a writer at the age of 13. In first year of high school at UTS we were asked to write an essay about an occupation we admired. I wrote about being a journalist. The vocation guide took our essays, gave us some tests, and to me he said, 'Batten, it's clear to me – this is scientific – that you're cut out to be a photo engraver.' Funny enough, my father owned a photo engraving business, but my parents wanted me to be a lawyer."

While practising, he started to write articles for jazz magazines that paid nothing but published all. His big break came when he was introduced to Robert Fulford, then editor of the *Saturday Star* book page. Fulford asked him to do a book review, and he laboured over it for three weeks, producing an 800-word piece that Fulford received with the comment, "You're a writer." More articles followed, and Batten stole time for his writing assignments when he should have been researching law texts at the library. "I didn't feel guilty for a second," he laughs.

In 1963 he was offered a job at *Maclean's* magazine and spent all of 10 minutes considering and accepting a new career. For the next five years he bounced from one magazine to another and then took another leap - he became a freelance writer and has worked in his home office ever since, just up the stairs from the office of his wife, Marjorie Harris, another well-known Toronto writer.

Law school was not a complete waste of time. First off, it taught him discipline. Second, it gave him valuable insight when he wrote his books about lawyers and judges. "Also, it impresses the hell out of people when they know I'm a lawyer," he says. "I wrote about the musician Ronnie Hawkins three or four times, and he never referred to me as the writer, he always introduced me as 'the lawyer.' People seem to have a higher impression of lawyers than of journalists." Above all, law school was the start of a couple of treasured friendships that Batten wouldn't exchange for anything. ■

Judith McCormack

Judith McCormack had social justice on the brain from an early age. She worked as a legal secretary for Paul Copeland, and he encouraged her to go to law school which she did at Osgoode Hall at the age of 19.

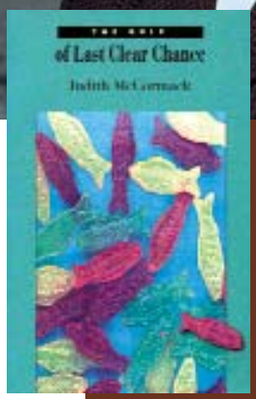
She also wanted to write but wasn't ready. After working in labour and human rights law in private practice and as in-house counsel for the Ontario Nurses' Association, she joined the Ontario Labour Relations Board as a vice-chair and became chair of the board in 1992. She returned to private practice as a partner at Sack Goldblatt Mitchell, and is now Executive Director and an adjunct professor at Downtown Legal Services, operated by the U of T Faculty of Law on Spadina Avenue.

She finally turned to writing in her late thirties. She was still a practising lawyer and had two small children, "so I only had time for short stories," she recalled during a conversation at her office. "I woke up at 5 am to write, and I was exhausted all the time. I must have been desperate!"

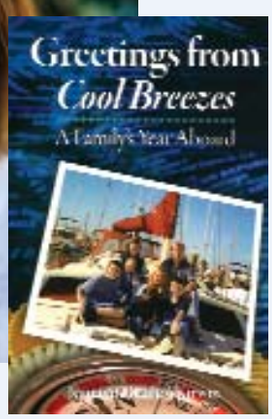
She found a better balance at the clinic where she spends two-thirds of her working hours teaching students and helping low-income people who have been treated badly by life. The rest of the time she writes, but she leaves her idealism at the clinic. "I don't write with an agenda; I hate polemic. My concerns are literary: Are the characters authentic, is the writing true, do I provide illumination in terms of human nature, does the rhythm work? The stories tend to develop on their own, and I go along with them. I hope they're as satisfying as some of the books I've read, books that send shivers down your back when you hit a moment of wisdom or truth."

Compared with the drafting of legal documents, fiction writing is "like dessert" she says. "Legal language can be sonorous or elegant but it must follow the etiquette. Fiction is delightful because you can use such a broader range of words and structures. At the same time it's a challenge. Sometimes the words, sentences or paragraphs are a tangle, other times it's clear sailing. Writing is difficult, and you have to be fiercely dedicated."

Two years ago, McCormack took time off to work on the structure of her first novel. She gave the plot and the characters her undivided attention, and after building the framework she was ready to return to work while adding layers, texture and nuances to the story in her spare hours. The book will be published in 2007. ■



Shortlisted for the Journey Prize for her first short story in 2000, Judith McCormack was named as a finalist for the $15,000 Rogers Writers' Trust Prize for Fiction in 2003 for her first book, *The Rule of Last Clear Chance,* part of the Second Annual Great Literary Awards. Her debut collection was also nominated for the 2004 Commonwealth Writers Prize and was listed in *The Globe and Mail's* Top 100 best books for 2003. This year her short story, *A Theory of Probability,* first published in the *Harvard Review,* was published in Biblioasis' limited edition short fiction series. Her stories have been published in *Descant* and *The Fiddlehead* and anthologized in the *Journey Prize Anthology* and *Coming Attractions Anthology.* Her first novel will be published in 2007.



Jeananne Kathol Kirwin

If you dream of spending some time on your writing, far away from it all, there are lots of options. You could rent a house in rural Spain, switch homes with a family from another country, or take a "seabattical" as did Jeananne Kathol Kirwin. A graduate of the Faculty of Law ('83) and a practising Edmonton lawyer, Kathol Kirwin, her husband Patrick ('82) and their four children spent a year sailing the Eastern seaboard and the Caribbean in 2000-01 aboard their catamaran Cool Breezes. A writer at heart, Kathol Kirwin thought she would complete the great Canadian novel while aboard, but it was her weekly e-mails home that ended up as *Greetings from Cool Breezes: A Family's Year Aboard,* published in 2005. A link on her website www.jeananne katholkirwin.ca shows how you, too, can experience the live-aboard life – for a week or for a year. ■

Karina Dahlin is a Toronto writer and editor. She was co-editor of the University of Toronto alumni magazine from 1996 to 2000.

If you are one of those alumni with a knack for creative writing and would like to share your work, send us your stories, poems, screen plays or other expressions, and we will post them online. See our website at www.law.utoronto.ca for more information and send your material to Jane Kidner at j.kidner@utoronto.ca

Law school celebrates career achievements of former dean and justice of the Supreme Court of Canada

INTERNATIONAL DIGNITARIES AMONG THOSE WHO HONOURED FRANK IACOBUCCI

On October 19 and 20, 2006, the law school hosted a two-day symposium celebrating the prolific and distinguished career of the Hon. Frank Iacobucci, former justice of the Supreme Court of Canada (1991-2004) and former dean of the Faculty of Law (1979-1983). Organized by Prof. Sujit Choudhry, a former student of the Hon. Iacobucci, the symposium included highlights of Iacobucci's career as a legendary jurist, university administrator and public servant. The illustrious line-up of presenters included international dignitaries, the Hon. Aharon Barak, former President of the Supreme Court of Israel and the Hon. Dieter Grimm, former Justice of the German Constitutional Court, as well as a number of highly accomplished professors and others including Robert Prichard, President and Chief Executive Officer, Torstar and former Dean of the Faculty of Law (1984-1990) and President of the University of Toronto (1990-2000). "Frank Iacobucci is an extraordinary individual and we are absolutely delighted to honour his outstanding career and demontrate our deep respect and affection for him," said Dean Mayo Moran. "His personal and professional reputation mirror everything that the Faculty of Law strives for." The following are excerpts taken from speeches given at the symposium by law professors Ernest Weinrib and Martin Friedland.

Frank Iacobucci: *The Teacher*

EXCERPTS FROM A SPEECH BY ERNEST J. WEINRIB

University Professor and Cecil A. Wright Professor of Law

It has been almost four decades since I met Frank Iacobucci. When I was a student at the University of Toronto's Faculty of Law, he was my teacher. Throughout all the subsequent stages of his resplendent career – when within the university he was my colleague, my dean, my provost and my president, and when beyond the university he held the highest positions of public and judicial service – I always continued to think of him first and foremost as my teacher.

That Frank was a successful and (more unusually!) a beloved teacher is news to no-one. His humour and humanity were as conspicuous in the classroom as elsewhere. He projected a sense of camaraderie with his students, making it clear through every gesture and inflection, through every wisecrack, through every histrionic raising and lowering of the eyebrows, that he took delight in being with us, that all persons in the class had his respect and affection, that the joy of learning was compatible with the utmost intellectual rigour. For many of us, he did the unthinkable: he made the courses in Business Organizations and Tax fun. In his classes, Plato's observation that playfulness is the sister of seriousness was constantly and amply confirmed.

Business Organizations and Tax are, I imagine, not easy courses to teach. Unlike Torts, for instance, they involve situations that are far from the experience or even the imagination of

many law students. The teacher has to present complex material to satisfy a complex set of pedagogical needs. Some students come into such courses from backgrounds that have made them knowledgeable in the basic concepts. Others have no such antecedent knowledge but hope to practice in these areas. Still others have neither knowledge nor hope. They come into a course like Business Organization out of a vague sense of duty, feeling that their experience as law students would otherwise be somehow incomplete.

WHEN I started out in Frank's courses, I fell into the latter category. I had come to law school from the study of classical literature and history. It had never previously occurred to me that there was anything about the corporate or business world that could engage the intellect in the slightest. In the first class in Business Organizations Frank suggested to us that we might find it helpful to read the business section of the newspaper. I still recall my inner reaction: "Read the business section of the newspaper? Why would anyone want to do *that?*"

An incident a few classes later revealed to me what a wonderful teacher and human being Frank was. Frank was dealing with capital structures, leading the class through a series of operations involving shares. The biz-whizzes among the students were carrying the discussion with what seemed like unbelievable self-assurance and sophistication. For my part, I didn't have a clue about what was going on. After a number of minutes I put up my hand and said something like this: "I don't understand anything that anybody is saying. I think the problem is that I don't know what a share is. Can you tell me: what is a share?" The class, almost one hundred students strong, erupted into laughter at the simpleton whom they had discovered in their midst. But after the laughter subsided, Frank replied along these lines: "That was a truly profound question. In fact, it is the central question of this course. What we are going to try to figure out over the rest of the year is what a share is, what its legal function is within the corporation, what rights and powers it gives, what duties it creates, and so on." Frank's response was a lesson in teaching that I have never forgotten, though I cannot pretend always to have lived up to it. In replying in so dignified and affirming a manner, he taught me that every question has to be treated seriously and with respect, that every confession of ignorance is a teaching opportunity, and that good university teaching requires not merely intellectual dexterity but also sympathy, human insight and the capacity to encourage.

AS a law teacher, Frank was not a theorist of education but an educator. How he regarded what he was teaching has to be inferred from his activity as a teacher, from the material he presented in class, and from the questions and issues that he pressed upon the students who were sitting before him.

As someone who was privileged to be among those students, I want to reconstruct one of those classes from his Business Organizations course. It was a class that made a particularly strong impression on me at the time, leaving me for a considerable period close to obsession with the issues it raised. The class dealt almost exclusively with *Perlman v. Feldmann,* the celebrated case in the United States dealing with the receipt of a premium for the sale of the controlling shares of a corporation.

In *Perlman v. Feldmann* the defendant, the dominant shareholder and chairman of the board of directors of a steel producing company, sold his controlling block of shares, thirty-seven percent of the outstanding stock, to a syndicate made up of end users of steel. At the time of the sale, steel was in tight supply because of the Korean War. The purchaser, who was interested in securing a source of supply, bought the controlling block at almost twice the over-the-counter market price. The price was not offered to other shareholders. The plaintiff was a minority shareholder who sued to hold the defendant accountable to all shareholders for the premium he had received. In a two-to-one judgment, the court held for the plaintiff.

"Frank inspired his students through his unique combination of humanity and rigour. He was, and is, thoughtful in every sense of that word."

Why did Frank teach this case? To be sure, the case had given rise to considerable academic literature in the United States. As Frank pointed out, decades earlier, Adolf Berle had argued in his classic work on the corporation that the power that accompanies the control of a corporation was itself a corporate asset, and that therefore the holders of that power had to exercise it for the benefit of all shareholders and not for their personal interests solely. A few years before our class, an important article had appeared in the *Harvard Law Review,* arguing that all shareholders should be given the equal opportunity to benefit from the sale of control, and proposing mechanisms to achieve this. In the American scholarly controversy about sale of control, *Perlman v. Feldmann* was the most conspicuous judicial exhibit. But, as Frank also made clear, *Perlman v. Feldmann,* whatever its interpretation, was not the law in any Canadian jurisdiction. We were, it seems, not being taught this case because we would need to know it as a particular legal datum if we pursued careers as practicing lawyers.

TWO reasons for teaching this case come to mind. First, it posed an intellectual puzzle about the nature of the corporation as a legal entity, and thinking through this puzzle would help us come to grips with the entire body of law that we were studying in the course. Frank wanted us to understand, or at least think about, corporate law as a structured and ordered whole. The case forwarded this purpose admirably by raising in the sharpest possible form the relationship within the corporation between individual and collective interest. Second, the case was also an occasion for thinking about the connection between law and the morality of business. In the course of our classroom discussion, Frank asked whether the sale of control raised a moral issue, and how we would advise a client in a situation like this given the state of the law in Canada. He also asked whether the situation called for legislation, and what the legislation should say. The case was thus

also an occasion for us to consider our future lives as lawyers and as legally informed citizens.

Frank's treatment of this case – the explanations he suggested, the questions he raised, the puzzles he left us with – show the powerful intellectual effect that Frank had as a teacher. Frank inspired his students through his unique combination of humanity and rigour. He was, and is, thoughtful in every sense of the word.

In addition to the qualities I have already noted, what this class on *Pearlman v. Feldmann* strikingly illustrates is the juxtaposition of two factors, not easily combined, that are essential to the teaching of law. On the one hand, Frank strove for absolute clarity in the classroom. We were never left confused about how the transactions in question worked and what, at least at the surface level, the law said about them. He had no interest in the easy self-affirmation that comes from glorying in the comparative ignorance of one's students. He accordingly took special care to make sure that his students, many of whom (like me), had no anterior interest in or familiarity with his subjects, understood both the factual and legal underpinnings of the situations with which he was dealing. We would thereby be equipped to address the more challenging intellectual issues to which the material gave rise. In this sense, Frank demystified his complicated areas of law.

ON the other hand, as his class on *Perlman v. Feldmann* indicates, he nonetheless generated the sense of perplexity that makes law worth thinking about. The initial clarity was always provisional and never final, always merely the preliminary to further questions that deepened what preceded. Frank seemed to see legal education as having the students ascend a series of platforms, each one built on an understanding of the previous one. In him, the openness of his character was perfectly aligned with the way he had us engage with the ideas he was teaching. This made us all feel that we were his partners in the great joint-venture of learning. That is why, despite his subsequent accomplishments and distinctions, anyone fortunate enough to have been in Frank's classes still regards him primarily as the teacher. ■

Frank Iacobucci: *The University Administrator*

EXCERPTS FROM A SPEECH BY MARTIN L. FRIEDLAND
University Professor and Professor of Law Emeritus, University of Toronto

It is an honour to be the lead-off batter in this tribute to an all-star – Frank Iacobucci. I will probably not be the only one to make some reference to Frank's love of baseball. My talk will be about another of his passions, the University of Toronto, where he spent almost twenty years of his life.

Sometime in early 1967, Peter Williamson, who taught corporate and securities law, decided to leave the University of Toronto Law School to return to the Dartmouth business school. The law school therefore needed a corporate law teacher. I told Dean Caesar Wright about Frank. We had become good friends as fellow Canadians doing graduate work at Cambridge. Caesar was concerned about the cost of bringing Frank up for an interview and I suggested that perhaps Osgoode would share the expenses. I put the proposition to a person at Osgoode who also knew Frank. Several weeks later, while I was waiting to hear back from Osgoode and before I had spoken to Frank, I happened to drop into the faculty lounge at Osgoode, which was then downtown. Who should be there but Frank, being interviewed for a position at Osgoode. Needless to say, I was a bit shocked and told Frank that the U of T may be interested in hiring him. When Frank got back to New York he wrote to Caesar expressing an interest in a position at U of T. As it turned out, Osgoode did not offer Frank a position, and Caesar did – without an interview. Because of that series of events, it is the U of T that is hosting this symposium rather than York University.

Caesar had died that spring and Frank was his last appointment. Ronnie McDonald was the dean who welcomed Frank to the faculty. Frank recently told me that he always remembers one comment of Ronnie's: 'Everyone is much more sensitive than he appears to be.' Frank is probably more aware of others' sensitivities than most of us are. Perhaps this is why he quickly became one of the key persons in the faculty. He was the voice of reason, a role that Bob Sharpe later took over. Students loved him. Faculty respected him and in the year he joined the faculty he was appointed to the important 'Special Long Range Planning Committee,' chaired by Dick Risk.

Not surprisingly, Frank was chosen by his colleagues as one of four faculty members on the search committee that was to choose a new dean after Ronnie McDonald had announced that he was stepping down. I was honoured to have been selected to be the dean. Ralph Scane stayed on for another year as associate dean and then Frank willingly took his place. The early 1970s were some of the most challenging times in the history of the law school. Many of the student activists from the late 1960s were then in law school and demanded change. Frank was the perfect person to help negotiate the changes.

FRANK helped develop new curricular changes, such as the legal aid program, the cluster program, and directed research. He took an active role in both the cluster and directed research programs. Indeed, he ran the law school's first cluster program – the business planning cluster with part-time instructors Peter Dey and Tom McDonnell. He was also one of the first to be involved in a directed research project. Frank had been asked by the Alberta

government to do a report on the reform of some aspects of corporation law. Two third-year students, Marilyn Pilkington, who later became the dean of Osgoode Hall Law School, and Rob Prichard worked with Frank on the project under the directed research umbrella and became co-authors of the book eventually published by Canada Law Book in 1977, *Canadian Business Corporations*. That project was probably the most successful directed research project in the thirty years that the program has operated.

Frank's skills in solving problems and achieving results became evident to the faculty association and Frank became the chair of the association's grievance committee over a two-year period. At that time, there were a number of denials of tenure and salary disputes throughout the University and Frank negotiated with university officials on such issues as whether the proper procedures had been followed in individual cases. President John Evans therefore became aware of Frank's effective involvement in these matters and in 1975, when Jill Conway, the University's vice-president of internal affairs, left to become president of Smith College, Frank was asked to take her place at Simcoe Hall.

THIS was a difficult time for universities across the country. Government support was dropping after the large infusion of funds in the 1960s. As a result, budgets were being cut and people were being let go. Frank was sensitive to the conflicting demands and developed policies that helped persons find other employment within the University. When researching the history of the University of Toronto, I came across many instances where his concern for others came through. He advised the president and other administrators, for example, to be careful in requesting donations for the University's fund-raising campaign from members of the faculty and staff at a time when persons were vulnerable to dismissal and so might feel undue pressure to donate. Similarly, when there was discussion about a ground-breaking ceremony for the new athletic centre – Fort Jock – which had been opposed by local residents, Frank's astute advice to the director of athletics was that 'a ceremony at this time would be seen by local residents' associations as "rubbing salt in the wound" and might even spark demonstrations.'

Frank left Simcoe Hall in June 1978 for a sabbatical in Cambridge – his only sabbatical in his entire career on and off the bench. My period as dean was to expire at the end of June 1979 and Frank was the obvious candidate to succeed me. He had very strong support in the faculty and the university, and the search committee had no difficulty in arriving at its decision.

AS dean, Frank continued the momentum that he had helped create in the 1970s. The only thing he bargained for on becoming dean was a commitment by the administration for general support of the law school. He also strengthened relations with our alumni, who were and are very fond of Frank. He started the alumni magazine, with Anne Wilson as the first editor, and he initiated the distinguished alumni award and dinner, with Bora Laskin as the first recipient. He also started the process of planning for a new library building, which Rob Prichard so effectively brought to a successful conclusion when he became dean.

When Jim Ham's term was up as president, the University chose Don Forster to succeed him, but he died a few weeks before he would have taken office. Frank had had discussions with Forster and was assured of his support of the law school. David Strangway, the provost, then became president for a year and in the fall of 1983 invited Frank to become his provost. Frank accepted, although he was not at all anxious to leave the deanship, where he was much loved. The *U of T Bulletin* carried a story about a 'stunning film' featured at the 1984 Law Follies. It was vintage Iacobucci, showing a despondent Frank in Simcoe Hall with students parading outside with posters reading 'Bring Back the Yak.' Frank is shown playing solitaire and taking occasional swigs of Scotch. At last the phone rings, but it is a wrong number. In the end, the students break in and Frank eagerly returns with them to the law school.

Before long, the federal government came calling and in mid-August 1985, Frank was appointed deputy minister of justice, effective October 1985. I will leave it to others to describe his role as deputy minister, but I am sure that the same skills that made him a success in the University carried over to that important assignment.

> *"Frank is probably more aware of others' sensitivities than most of us are. Perhaps this is why he quickly became one of the key persons in the faculty."*

IN August 2004, a few months after Frank's retirement from the Supreme Court – and with Frank now a free agent – the chair of governing council, Rose Patten, called, inviting him to become the interim president of the University until a new president could be found. Robert Birgeneau, who had taken over the presidency from Rob Prichard, had left to become the chancellor of the Berkeley campus of the University of California. This was a crucial year in the University's history and later historians will write more fully about Frank's term as interim president. He certainly kept the team together and in the running for the pennant. He continued to use his skills in finding common ground and building consensus. I know from casual discussions with the vice-presidents at Simcoe Hall that they loved working with Frank and liked his style of leadership. Rob Prichard recently wrote – from his unique vantage point – that as interim president Frank 'restored joy and optimism to the University' and 'generated new energy and excitement both within and beyond the institution.'

Let me conclude by stating that Frank has always been a good team player, as the many presidents and deans he served under and the teams that he led as dean, vice-president and interim president will attest. Loyalty to his colleagues and to the institution is one of Frank's strongest attributes. I believe that this carried over to the Court, where the same approach to decision-making can be found. Frank recently told me that the first question he asked himself after a Supreme Court hearing was: 'Can I be part of a consensus?' 'There is a duty', he went on to say, 'to see if the court could speak with one voice.' The statistics on voting patterns and his many judgments on the Supreme Court of Canada that others will talk about at this symposium will – I am confident – clearly support my comments about Frank as a person who embodies reasonableness, loyalty, and sensitivity to others. His role on the Court would seem to be an extension of his role within the University. ■

THE AHARON BARAK DISTINGUISHED LAW FELLOWSHIP

VICTOR HUM BURSARY

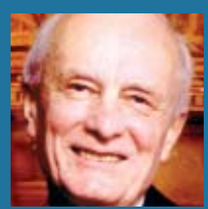
THE HON. JUSTICE WINKLER FELLOWSHIP

NATHAN STRAUSS Q.C. FELLOWSHIP

MARYANNE MAGHEKAN KING MEMORIAL GIFT

JAMES FARLEY BURSARY





Gifts to the Law School

BY LISA E. BOYES

The Faculty wishes to thank the many generous donors who are providing for the next generation of lawyers, scholars and teachers, through fellowships and bursaries.

The Aharon Barak Distinguished Law Fellowship

(L-R): Elika and Aharon Barak

Aharon Barak, recently retired President of the Supreme Court of Israel and a towering figure in constitutional, administrative, criminal and international humanitarian law, is also a close colleague of the Faculty of Law and widely admired in the Canadian legal community. Justice Barak holds the highest academic honours in Israel, along with 15 honourary degrees from universities in Israel, Europe, the United States and Canada. He has also won the International Justice in the World prize, granted by the International Association of Judges.

On the occasion of his retirement, his Canadian friends and admirers decided that the best way to honour him and to formalize his relationship with the Faculty would be to establish a visiting fellowship in his name.

The Aharon Barak Distinguished Law Fellowship will bring Justice Barak to the Faculty annually for two weeks to teach his wildly popular Constitutional Courts, Constitutional Rights course. This year, he will also offer his own intensive course on the topic of interpretation, spanning common and civil, public and private law. The Faculty hopes that his wife, Elika Barak, having retired as the Deputy President of the Labour Court of Israel, may also share her expertise in the constitutionalization of labour law and social welfare.

Justice Barak's association with the Faculty began in earnest in 1990, when he was invited by then-Dean Robert Prichard to teach an intensive course. When Israel chose to use the *Canadian Charter of Rights and Freedoms* as a model for its own system, the Faculty connection and friendships solidified. As Deputy President of his country's Supreme Court, Justice Barak soon invited Professor Lorraine Weinrib to teach in Israel's continuing education courses for senior judges and in Israel's Ministry of Justice. He later formed a warm friendship with former Faculty Dean Frank Iacobucci, then justice of the Supreme Court of Canada, and with Dieter Grimm, a former justice of the German Constitutional Court. All three have now co-taught for some time, with Professor Weinrib, in the Constitutional Courts, Constitutional Rights class.

"Aharon Barak is that rare person," says Professor Weinrib, "for whom the question 'what is his expertise' isn't really applicable. What he does is so wide-ranging that it covers a huge mass of doctrine, as well as theory and practice. That is why this fellowship is so valuable to the Faculty and the legal community." Prior to his presidency of the Supreme Court, Justice Barak oversaw the legal work of the entire country as Attorney General and also took a leading role in negotiating the peace treaty with Egypt. As President of the court, he wrote judgments on thousands of cases, in every area of law.

Perhaps his most controversial decision was his determination that Basic Laws protecting fundamental human rights would have the status of supreme law, rendering invalid any inconsistent Knesset legislation. Today there is every indication that the governments of Israel depend on the Supreme Court to stabilize as much as possible the volatility of the political and legal systems in Israel.

The Faculty of Law is delighted that the following people have contributed to the Aharon Barak fellowship:

Mr. Brent Belzberg and Mrs. Lynn Belzberg

The Honourable Charles R. Bronfman

Gluskin, Sheff & Associates Inc.

Dr. Edward L. Greenspan

Mr. George H. Grossman

Dr. Ralph Halbert and Mrs. Roz Halbert

Koskie Minsky

Dr. Joseph L. Rotman

Dr. Lionel H. Schipper and Mrs. Carol Schipper

Mr. Gerald W. Schwartz

Dr. Joey and Mrs. Toby Tanenbaum

The Victor Hum Memorial Bursary

IT was a long road from schoolyard taunts and racial slurs – from 1950s Canada, when a first-generation Chinese-Canadian like Victor Hum ('83) was far from the norm – to the leadership role that Victor Hum played within the legal profession in Toronto. The law firm of Fraser Milner Casgrain, to which Victor dedicated his entire career, has recently recognized the road that he travelled as an inspiration to many who face obstacles in achieving their goals. The firm has established the Victor Hum Memorial Bursary at the Faculty of Law, to be awarded in perpetuity to a student in any year of the J.D. program who has demonstrated a commitment to promoting diversity within the law school community.

It is a mark of Victor's impact, on his firm and his profession, that 150 colleagues and former classmates have committed a total of more than $100,000 to establish the endowed memorial bursary. Victor was passionate about promoting diversity and the rights of minorities in the eyes of the law.

Victor, who died suddenly in July 2006 at age 47, was born to working-class parents in Ottawa. They wanted better for their five children, of which Victor was the eldest. He not only strove and succeeded academically – he was the first in his family to complete a university degree, and then set his sights even higher: on studying law at the faculty. Victor articled at what is now Fraser Milner Casgrain and was hired by the firm immediately after graduation.

Victor had an expansive definition of community that included his wife and three children, his parents, siblings and extended family, and his firm. He was very important to Fraser Milner Casgrain. Chris Pinnington, the Managing Partner of Fraser Milner Casgrain's Toronto office, remembers Victor as being "invaluable to his clients for his expertise in business law and his practical approach to solving their problems."

Victor also took it as his personal responsibility to support and offer guidance to young colleagues. "He was highly respected and well liked at Fraser Milner Casgrain for his unfailing loyalty," Chris adds, "his constant cheerfulness and good humour, his passion, energy and enthusiasm in everything he did, and his concern and care for others. Victor was a wonderful partner and a terrific role model for the younger lawyers at the firm."

Student Fellowship in Appreciation of The Hon Justice Winkler

The University of Toronto and the University of Toronto Faculty Association (UTFA) have come together to name a fellowship in appreciation of the Honourable Mr. Justice Warren Winkler. The Honourable Mr. Justice Warren K. Winkler Graduate Fellowship in International Human Rights has been established at the Faculty of Law through a total endowment of $100,000, under the terms of the Graduate Student Endowment Fund. Half of the annual income from the endowment will be matched by the Faculty.

The impetus for the award is the university's and the UTFA's recognition of the service that Warren has provided in negotiations between the two entities.

Warren is a specialist in civil litigation law and in labour and employment law. He was called to the Bar in Ontario in 1965 and appointed Queen's Counsel in 1977. He was appointed to the Ontario Superior Court of Justice in 1993 and, in 2004, became the Regional Senior Justice for the Toronto Region.

"I am gratified," says Warren, "that the university and the Faculty Association have seen fit to honour me and my interests in this way, and especially to provide for students engaged in this critical and fascinating area of research."

The Winker Graduate Fellowship will provide an annual award in perpetuity. The first award will be made in 2007.

The Nathan Strauss Q.C. Graduate Fellowship in International Law and Intellectual Property

Over the past several years, Mrs. Lilly Offenbach Strauss, widow of Nathan Strauss Q.C., has been a devoted supporter of the U of T Faculty of Law. Her recent gift to establish the *Nathan Strauss Q.C. Graduate Fellowship in International Law and Intellectual Property* will be awarded annually to a student enrolled in the S.J.D. program whose thesis focuses on any significant past, present or contemplated issue relating to intellectual property. As well, the thesis will include a discussion of the issue's relevance to Canadian society.

The fellowship also benefits from a 1:1 match through the Government of Ontario's Graduate Student Endowment Fund (GSEF). As a result, the total value of the gift is $100,000. As part of the GSEF program, the Faculty has also agreed to match half of the annual income from the endowment, producing $6,000 in annual funding for a promising graduate student.

Mr. Strauss, who passed away in 1999, was widely regarded as a model lawyer. His compassion, professional conduct, and integrity were hallmarks of his nearly fifty years of legal practice, which ultimately led to his appointment as a Life Bencher of the Law Society.

Through her most recent gift, Mrs. Strauss has demonstrated her strong commitment to legal education, academic rigor and student financial aid. Mrs. Strauss is also responsible for the establishment of graduate fellowships in the areas of Canadian Constitutional Law and International Law, as well as an essay prize in Legal Ethics.

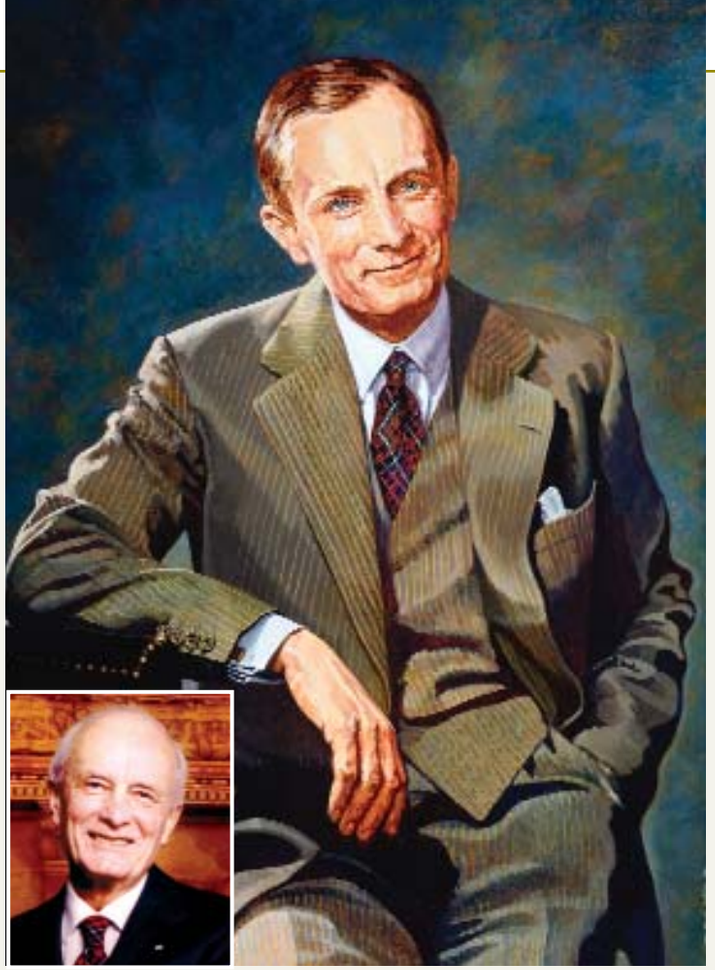
Tributes on Canvas

Past Deans of Our Faculty

Faculty of Law graduates Jean M. Fraser ('75) and Thomas Francis Rahilly ('69) have honoured the Faculty with a generous donation toward a project to commemorate, in original paintings, past deans of the Faculty.

Past Deans number eight, spanning the more than 60 years from 1944 to the present. Among those to be included in the Faculty's "portrait gallery" are the late Mr. Justice Ronald St. John Macdonald, who served as Dean from 1965 to 1972; Martin L. Friedland, Dean of the Faculty from 1972 to 1979, and the Honourable Frank Iacobucci, Law Dean from 1979 to 1983. Other illustrious Law Deans include J. Robert S. Prichard (1984-1990), Robert J. Sharpe (1990-1995) and Ronald J. Daniels (1995-2006).

Each past Dean to be painted will select the artist of his choice. The first portrait, that of Mr. Justice Ronald St. John Macdonald (pictured here), was completed by Linda Koolouris Dobbs a short time before his death this past September. A painter and photographer, Linda has rendered a series of prominent Canadian figures in portraits, including ballerina Karen Kain, writers Brian Moore and Richard B. Wright, and a host of public and private figures. Her art is featured in corporate and private collections worldwide and reproduced in a number of international publications. For the Macdonald portrait, Linda relied on her personal interactions with her



subject – "for me," says Linda, "it's all about the subject, rather than about my style." Mr. Justice Macdonald wanted the portrait to be virtually devoid of background and furniture, showing him in his favourite suit and the Macdonald clan tie. Linda's goal was to portray his tremendous vitality, honesty and humanity through the colours and textures of the painting. Linda typically works from an initial line drawing of the subject, which is then transferred to canvas, after which she develops a sepia undertone on which the colours are built.

The Ronald St. John Macdonald portrait now hangs in the Faculty lounge. Artist Joanne Tod has been commissioned to paint the portrait of Martin Friedland, now in progress.

In Remembrance of MaryAnne Maghekan King

ON SEPTEMBER 20, 2006, the Faculty of Law hosted a reception, presided over by Dean Mayo Moran, to honour the memory and contributions of alumna MaryAnne Maghekan King ('00). During the reception, a painting by Toronto Aboriginal artist Holly Pichette was unveiled as a tribute to MaryAnne. Generous donations from her classmates, the class of 2000, enabled the commissioning of the artwork.

MaryAnne, who died suddenly in November 2004, specialized in Aboriginal law, practicing in Toronto and then in Happy Valley-Goose Bay. She was a passionate advocate in her field of practice and an enormous source of guidance to colleagues and classmates.

THE HONOURABLE JAMES FARLEY BURSARY

The Insolvency Institute of Canada (IIC) has recognized the pioneering contributions of a faculty alumnus, the Honourable James Farley, now retired, through a bursary in his name. The institute has established the bursary with a $25,000 donation to the faculty, which will be matched through the provincial Ontario Trust for Student Support (OTSS) program, for a total endowment of $50,000. The annual payout from the fund will be awarded to a student in the J.D. program who demonstrates both financial need and academic excellence in the areas of insolvency and corporate law.

"In good measure," says David Baird ('89) of Fasken Martineau, and a member of the IIC, "because of Jim's dedication and the high-profile cases he has presided over in Ontario, insolvency law is no longer a hidden form of commercial law."

Jim received his LLB ('66) and his MA ('68) from the Faculty of Law and was appointed, in 1989, to what is now called the Superior Court of Justice in Ontario. He is considered the founder and was, prior to his retirement, the supervising judge of the Commercial List. The list consists of the judges who preside over all insolvency cases and major commercial matters to be heard in Toronto and greatly aids in the timely assignment of expert judges and the hearing of these cases. Virtually all the major cases in Ontario insolvency and restructuring, up to 2006, bear the Farley stamp of pragmatism, sense of urgency, and powers of persuasion: Algoma-Steel Olympia & York, Eaton's, Air Canada, Stelco, and Cadillac-Fairview, among others.

"BECAUSE OF JIM'S DEDICATION AND THE HIGH-PROFILE CASES HE HAS PRESIDED OVER IN ONTARIO, INSOLVENCY LAW IS NO LONGER A HIDDEN FORM OF COMMERCIAL LAW."

The purpose of a restructuring is to maximize value for the company's shareholders. For them, and for the economies and people that rely on these companies, a going concern produces the greatest value. When insolvency law was in its newborn stage, Jim came up with innovative ideas to give judges authority to deal with matters not specifically covered by the insolvency statutes. A leading expert in restructuring over many years, he is also known for having devoted enormous amounts of personal time to these cases "when the fire was burning," says David. Jim has been a proponent of professional development for practitioners and students of insolvency and commercial law, speaking at many conferences.

Jim also presides, with David, over the annual Law Student Writing Awards program that IIC sponsors. In 2006, two Faculty of Law students, Ezgi Kaya and C. Warren Bell, placed first and third, respectively, among 16 entries, in this competition. The Institute reserves the right to publish the papers, at a minimum on its website, and provides monetary prizes and other benefits to winning students.

The Insolvency Institute of Canada is a private-sector, not-for-profit organization comprised of trustees and lawyers dedicated to the recognition and promotion of excellence in the field of insolvency. It has also provided undergraduate fellowships and commissions research projects on important issues in Canada's insolvency and restructuring system.

"Meet the Students" Donor Reception

(L-R): Robin MacAulay ('94) from McCarthy Tétrault LLP and Dean Mayo Moran

This fall, the Faculty and Dean Mayo Moran hosted a reception to thank the many individual and corporate donors who have provided prizes, financial aid awards and graduate fellowships, and to give donors the opportunity to meet the students who have benefited from their generosity.

"Financial aid," says LLB student Nicole Henderson, who spoke at the event on behalf of students, "is even more important than most people realize. For many students, including myself, the cost of attending law school could be prohibitive without the assistance of these groups and individuals. I was glad to have a chance to communicate that appreciation to the donors directly."

IN MEMORIAM

Remembering our friends

THE HONOURABLE EDWIN (EDDIE) GOODMAN '40

(1918 – 2006)

Successful lawyer, political insider, philanthropist, and beloved friend of the U of T Faculty of Law, Eddie Goodman ('40) died in August 2006 at age 87.

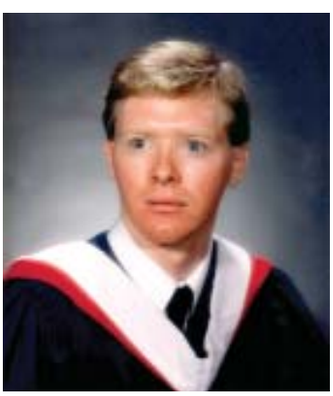
There is much sadness at his passing, among the many circles in which Eddie moved, but also more than 50 years of history imbedded in Eddie's community contributions and in Goodmans LLP (formerly Goodman and Goodman), the firm Eddie joined in 1947 and built with his father.

As was common among Jewish lawyers of the day, Eddie's father ran the firm single-handedly for 30 years. Once Eddie was called to the Bar in 1947, his father made Eddie a full partner. In the ensuing 30 years, Eddie helped advance the firm to the point where it is now one of the outstanding national law firms, with close to 250 lawyers and many loyal clients.

It was Eddie's business acumen and entrepreneurial bent that made him a success. He believed in 'no job is too small,' because out of the small jobs would come the big ones. Eddie had a true story to illustrate his point: two old men come to him needing help to evict a tenant slaughtering chickens in an apartment. Their son comes along to help translate. The son was Joseph Berman, who went on to co-found the predecessor to Cadillac Fairview and who looked up Eddie for help at that time.

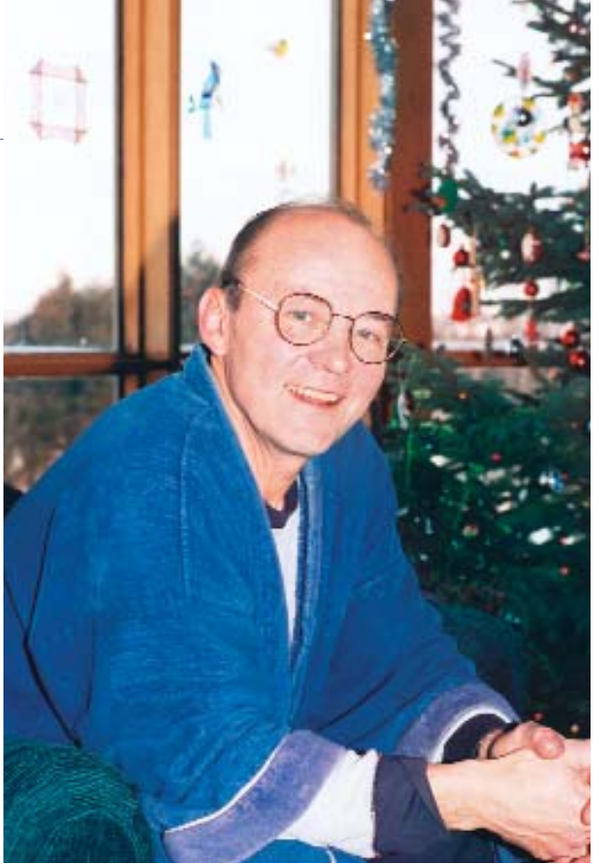
According to close friend and colleague Lionel Schipper ('56), the humanity of Eddie the lawyer and businessman was complemented by his patriotism and public service. He interrupted his legal training to serve actively in the Second World War and was twice wounded on the beaches of Normandy. He 'escaped' from hospital to return to his unit and help liberate France. That earned him the French government's *Chevalier in the Order of the Legion of Honour*. In the 1960s and '70s, he became established as a Red Tory within Ontario's Big Blue Machine and a key advisor to the Robarts and Bill Davis governments. Eddie was also, for five years, the national chair of the Progressive Conservative Party of Canada.

Eddie approached everything with enthusiasm, be it cheering his daughter on in early-morning hockey or soccer, or tirelessly working for his community. He volunteered on the boards of the Royal Ontario Museum, the National Ballet Company of Canada, the Baycrest Centre, the Boy Scouts of Canada, Princess Margaret Hospital, and the Canadian Institute for Advanced Research Foundation. In 1982, he was named an Officer of the Order of Canada and a member of the Privy Council of Canada. Eddie will be sadly missed by the Canadian legal community.



CHARLES CLARKE CONROY '90

At the height of his successful practice of law, Charles Clarke Conroy died on June 11, 2006 at the age of 40. A barrister, Charles represented with skill and diligence fellow citizens of Ontario. He exemplified the family crest, a book with the motto "The Strong Arm Uppermost." Following his call to the bar, he worked with his father in Sudbury, eventually creating his own law firm, Conroy Murno, also in Sudbury. By hard work, he provided well for his wife Sherry and his beloved daughters Brigid and Maeve. Traveller, skier, gardener, paddler, Charles was honoured in death when many Northern Ontario Judges and two hundred gowned lawyers attended his funeral. Family, colleagues, and judiciary all miss him terribly.

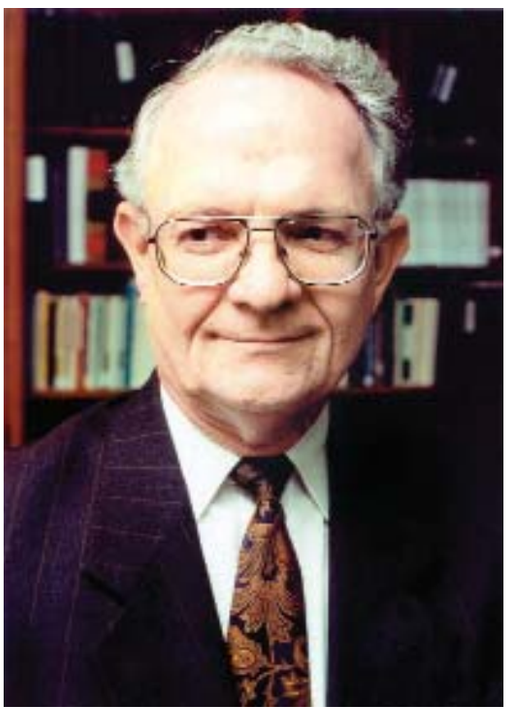


GORDON CHARLES NESS '66

Gordon Ness was a humourist, family man, artist and lawyer. The 64 year old partner in the Stouffville law firm Button, Armstrong and Ness died on September 28, 2006 from Non Hodgkin's Lymphoma. The multi-talented man with the inimitable sense of humour, who was known to his family and many friends as "Gordie," "Papa Ness," "Grunkle" and "Grampa Gordie," clung to life long enough to deliver a hilarious stand-up comedy routine at his step-daughter's wedding just five days before his death. "Gord had a wonderful sense of humour, he was a delightful person to know," said Bob Lewis, a 30 year friend. "He was also a man of integrity. He gave lawyers a good name." Gord was born in Sudbury, Ontario in 1941 and graduated from the Faculty of Law in 1966. He was hired by Reg Button, father of current Button, Armstrong and Ness partner Eric, in 1968 after traveling to Stouffville to close his first real estate deal. Gord took up residence in Stouffville with his first wife Lorna that same year and was named a partner in the firm in 1972. He became a "fixture" in Stouffville, involving himself in a variety of town activities. Gord was involved in a local weekly television show for Classicom Cable 10 called "Man on the Street" for two years in the late 1970's. He was a regular in Music Mania, and was active in the local sports scene. He was an accomplished artist, banjo player, sailor and skier. Gord moved to a rural property in Nestleton with his second wife Terri in 1989. It was there that he developed a love of the outdoors. "Everyone said it was me who took him away from Stouffville, Music Mania, his friends and sports," said Terri. "But it was really his chain saw and the trees." Gord's determination to use timber from his property to enhance his environment was evident even as recently as this past spring when he purchased a portable sawmill. He proudly displayed pictures of the device to anyone visiting his office. A dedicated family man, Gord leaves behind his wife Terri, daughters, Rebecca and Amy, stepdaughters Debra and Tammy, four grandchildren, sister Nancy, brother Roy and an endless array of friends. (*With files from Bruce Stapley, Stouville Free Press)*

DAVID H. GORDON '66

David H. Gordon, a former partner of McCarthy Tétrault, passed away suddenly on September 27, 2006. David graduated from the University of Toronto in 1966 and joined McCarthy & McCarthy in 1968 as a lawyer where he practised until his retirement in 2001. He specialized in business law and was also an expert in the area of foreign investment review. While at McCarthy Tétrault, David was an exemplary mentor to many associates throughout his tenure. He was revered for his teaching abilities and sense of humour and made the practice of law fun. Clients also enjoyed having David assist them and formed many long-term relationships with him. Because of David's ability to service clients with the highest degree of professionalism, he also attracted new clients continuously. In his retirement, David took up flying an ultra-light aircraft and obtained the required licence to do so. He had a small hangar built on his property in the township of Mulmur to accommodate his aircraft. He helped design his house, which was positioned to provide "picture window views" from the Niagara Escarpment. He also volunteered at Creedon Valley Nursing Home and on the Mulmur Police Commission Board. His family, consisting of his brother, James, and his wife Mary, his sister Ruth Parrott and her husband Fraser, his brother Brian Gordon and his many nieces and nephews, are coping with the loss of this fine gentleman, as are his many friends and colleagues at McCarthy Tétrault, Creedon Valley and Mulmur Township.



PROFESSOR RONALD ST. JOHN MACDONALD (1928 – 2006)

Former Dean of the Faculty of Law (1965 – 1972)

Professor Ronald St. John Macdonald, Dean of the Faculty of Law, from 1965 to 1972, was also a "citizen of the world," recognized as such by his peers and by international tribunals and societies. On September 7, 2006, the world lost this great champion of international human rights. Ronald died, at 78, in Halifax, Nova Scotia.

Scholar and educator, editor and judge, Ronald was invited, as the first and only non-European, to sit on the European Court of Human Rights in Strasbourg. Born out of the Council of Europe and with the atrocities of the Second World War still fresh in European consciousness, the court's central duty, via its diverse judiciary, was to provide access and independent public judgments to any individual or group with a case to bring forward. Ronald played a pivotal role, from 1980 to 1998, in these judgments and in what is now known as the "margin of appreciation."

Having served in the Second World War as a sub-lieutenant in the Royal Canadian Navy Volunteer Reserve, Ronald returned to his native Nova Scotia to study law at Dalhousie University. His master's degrees were obtained at London University and Harvard University. He taught at several Ontario law schools and at the U of T Faculty of Law prior to becoming Dean. He was also the first visiting professor of international law at Peking University (1980); has been published in the *Chinese Journal of International Law,* among many other scholarly publications; and has served as founding president of the Canadian Council on International Law and as president of the World Academy of Arts and Science. Ronald was also a member of the Permanent Court of Arbitration in The Hague (1984) and served, at various points over several decades, as the Canadian representative to the United Nations General Assembly.

As a teacher, Ronald was interested in and supportive of his international law students' career aspirations in public life, especially in the international field. He was genuinely convinced that international law was necessary to bring about a peaceful world and he acted on that belief both personally and professionally. "He was always extremely, enthusiastic about international law," recalls University of Toronto law professor Arnold Weinrib, who was Mr. Macdonald's student. "He saw it as a possibility of forwarding world peace. It sounds like a cliché, but he meant it." Former Dean of Law, Justice Robert Sharpe, also recalls the role Ronald played in his education. "His enthusiasm for international law was infectious," recalls Sharpe, now a justice on Ontario's Court of Appeal.

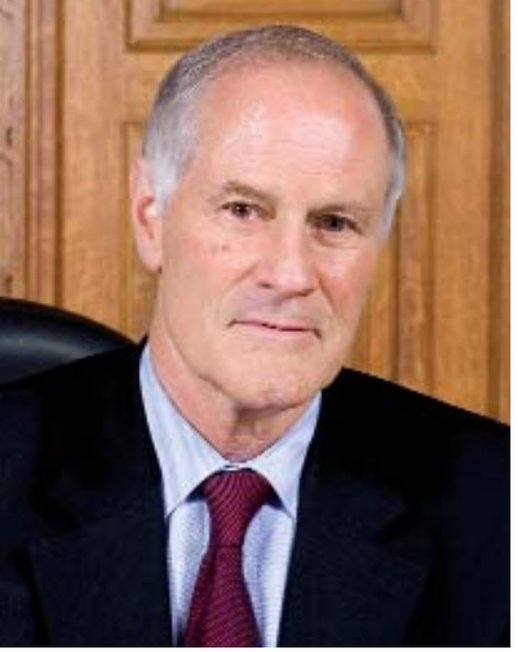
At home, Ronald was named an officer of the Order of Canada in 1984 and promoted to a companion of the order in 2000. In 1999, the Canadian Bar Association awarded him the Ramon John Hnatyshan Award for Law, for his "outstanding contributions to the law and legal scholarship in Canada."

STANLEY S. COHEN '67

Stan Cohen was a man of many passions. First and foremost, his family – his children, whom he placed at the centre of his universe; his five beautiful grandchildren; his first wife, Susan, with whom he shared much of his childhood and thirty wonderful years of marriage; and his second wife, Sheila, with whom he found laughter and peace for the last seven years of his life. He was also passionate about his interests – movies, reading, history, law. Unlike so many of us who are lawyers, he had a true interest in law as an intellectual pursuit. He loved his law school days at U of T, and went on, with two young children in tow, to earn a Masters of Law degree. Later in life, after he had tragically lost his beloved Susan, he left his long-time real estate practice in downtown Toronto and found his passion (and his life) again in his Orillia cottage life with Sheila. There, he met new work colleagues and friends at his Midland law firm; he completed certificates in ADR; he refreshed his real estate practice with the inclusion of mediation and arbitration; and he was among the first to earn his Law Society Specialist designation in real estate law. Stan desperately wanted to attend his 40th law school reunion in 2007, as he would have had the rare opportunity of being able to do so with his daughter Dana, whom he had coached through her law school years, and who would have been at her own 10th reunion. Sadly, it was not to be, but he will be there in spirit, and in memory, and in the hearts of all who he was passionate about, and all who loved him.

VICTOR HUM '83

Victor Hum passed away suddenly on July 16, 2006 at the age of 47. Victor obtained a Bachelor of Commerce from McMaster University in 1980 and an LLB from the University of Toronto in 1983. He was called to the Bar of Ontario in 1985 and admitted to the Roll of Solicitors of England and Wales in 1988. Victor articled and became a partner in 1991 at Fraser Milner Casgrain LLP. He loved his time at law school and enjoyed such pastimes as a game of hockey with his classmates as a member of the "Law Z" team. Victor will be remembered for his numerous wonderful qualities, including his sense of humour and ability to see things in a positive light. In particular, his classmates will remember fondly the dim sum lunches every week or two for the past 20 years at the reserved Hum table. In addition to his practice of corporate/securities law, Victor was a role model for many students and young lawyers and a former manager of the Toronto office's business law department. Outside of the firm, Victor was passionate about promoting diversity. He served as Director and Chair of the Nominating & Governance Committee of the Greater Toronto Marketing Alliance and participated on the Diversity Panel at the Career Development Office at U of T. Friends and colleagues at the firm have created a bursary at the law school in Victor's name to support diversity in the legal profession. Victor was admired and loved by so many people that he had come to know throughout his life. He will always be remembered for his easy smile, gentle manners and kind words. Victor will be greatly missed. He leaves behind his wife Marion and children, Courtney, Alexander and Andrew.



LAST WORD

THE HON. BILL GRAHAM ('64)

International Law and the Faculty – A Personal Reflection

The "international engagement" of the law school has evolved with the process of rapid globalization that has taken place since the 1960's. It was my privilege to be a witness to much of that evolution both as a part-time, and full member of the Faculty.

When Caesar Wright was dean of the law school and we were students, the international dimension of the program was essentially restricted to public and private international law. The former was regarded as the somewhat recherché preserve of government officials; the latter (conflicts of laws) more useful but still a rarity in practice. When Ron Macdonald asked me to teach a course on my return from Paris in 1969 on the Law of the EEC (now the EU), it was viewed as an interesting intellectual exercise but with little application, a view I sought to overcome by adding a comparative view of European and Canadian competition law.

When Frank Iacobucci asked me to join the faculty full-time in 1980, his primary purpose was to enrich the international character of our curriculum. It struck me that many colleagues, through their domestic courses, were already considering the international dimension of subject matters such as Labour Law, Securities Law and Human Rights Law. "Transnational law" (Myers McDougall's inspired phrase) was present across the curriculum, often without conscious articulation. As well, Michael Trebilcock was bringing his law and economics experience to international trade law. Commercial law under Jacob Ziegel acquired an increasingly international flavour, reflecting Canada's growing dependence on international commerce. Even bankruptcy and tax law where the activities of multinational firms transcended domestic law and blurred traditional borders became "internationalized." International law became its own discipline. Constitutional law, particularly in the area of Charter interpretation, came under the influence of international jurisprudence, a phenomenon reflected in other states such as Israel, India and a newly liberated South Africa which looked to Canadian jurisprudence to enrich their constitutional understanding. Our students, for their part, enthusiastically supported these developments not just through their courses, but also through the Moot Court internship programme.

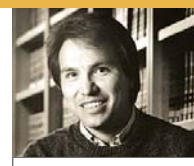
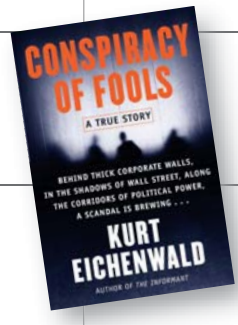
When I left the Faculty to enter Parliament in 1993, the depth and variety of our international offerings bore no relationship to the limited perspective of the 60's and 70's. The establishment of a Chair in International Law and Development, with its emphasis on providing perspectives from the developing world, moved the process to the point where we now can say that our view, and our capacity as a Faculty, is truly global.

As Chairman of the House of Commons Foreign Affairs Committee and subsequently as Foreign Minister, one thing I was consistently reminded of was how Canada's contribution to the development of international law is greatly appreciated around the world, particularly among smaller states dependent on rules-based systems rather than power diplomacy. Prof. John Humphrey's contribution to the Universal Declaration of Human Rights is still talked of, as is our singular contribution to the law of the sea, the Ottawa Treaty on land mines, and the formation of both the WTO and the International Criminal Court. More recently, the Human Security agenda and the related "Responsibility to Protect" doctrine, both launched under Lloyd Axworthy and promoted by Secretary General Kofi Anan, are receiving increasing international support in spite of strong resistance in certain quarters. Beneath the surface of the diplomatic efforts giving rise to these doctrines you will find lawyers who were first introduced to these concepts at Canadian law schools.

Today, our students are keenly interested in these developments whatever their chosen field. They see in them a reflection of the ever increasingly interdependent world of which they are a part and to which they want to make a positive contribution.

If we are to be able to meet the challenges of our new global society, our provincial and federal governments must continue to make available funding for research and for international internships for our students. I know that for its part, the law school will continue to play an important role in ensuring that Canadians are prepared for the changes and challenges that we will face in the new millennium. ■

First elected as Member of Parliament for Toronto-Centre-Rosedale in 1993, Bill Graham was re-elected in the federal elections of 1997, 2000, 2004 and 2006. From January 2002 to July 2004, Mr. Graham served as Minister of Foreign Affairs. In 2004, he was appointed Minister of National Defence. In February 2006, he was appointed Interim Leader of the Liberal Party of Canada and Leader of the Official Opposition, a position he held until December 2006. Prior to his political career, Mr. Graham practised law at the former Fasken & Calvin, specializing in civil litigation and international business transactions, and served on the board of directors of various public and private Canada corporations. Subsequently, he taught International Trade Law, Public International Law, and the Law of the European Community at the University ofToronto Faculty of Law. In recognition of Mr. Graham's commitment to public life and cooperation among peoples and nations, the William C. Graham Chair in International Law and Development has been established at the U of T Faculty of Law.

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
JANUARY 2007				**Jan. 25, 2007** **The 2007 Annual Grafstein Lecture in Communications** *Media Ownership and Media Markets: A Democratic and Economic Evaluation* with Professor C. Edwin Baker from the University of Pennsylvania (5:00 pm to 7:00 pm)		
					Jan. 26-27, 2007 **Conference – Indigenous Law and Legal Systems: Recognition and Revitalization** Professor James Anaya from the University of Arizona will deliver the keynote address	
FEBRUARY 2007				**Feb. 1, 2007** **Literature Through the Lens of Law** U of T Law Professors Anita Anand and Edward Iacobucci will discuss *Conspiracy of Fools* by Kurt Eichenwald (7:00 pm to 9:00 pm)		
						
				Feb. 15, 2007 **2007 Morris A. Gross Memorial Lecture** The Hon. Irwin Cotler, Former Minister of Justice and Attorney General of Canada, will deliver *"Pursuing Justice"* (5:00 pm to 7:00 pm)		
MARCH 2007			**Mar. 1, 2007** **Law, Religion and Society Discussion Series "Reasoning in Religion"** U of T Law Professor Anver Emon and Philosophy Professor Robert Gibbs (7:00 pm to 9:00 pm)			
				**Mar. 8, 2007** **International Women's Day** A series of events will be held throughout the day for students, faculty, alumni and friends of the law school in celebration of International Women's Day 2007. Special guest lecturer, Nicola Lacey of the London School of Economics will give the Cecil Wright Lecture from 5:00 pm to 7:00 pm.		
		Mar. 20, 2007 **Literature Through the Lens of Law** U of T Law Professor Colleen Flood will discuss *Year of Wonders* by Geraldine Brooks (7:00 pm to 9:00 pm)			**Mar. 29, 2007** **Law, Religion and Society Discussion Series** U of T Law Professor Jim Phillips (7:00 pm to 9:00 pm)		
MAY 2007		**May 7-8 2007** **Conference – The Convergence of Health and Law: International Perspectives** Professors Bernard Dickens and Rebecca Cook will deliver the keynote address (8:30 am)				

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Photos of 2006 IHRP summer internships around the world, featuring law students Megan McLemore, David Thompson, Travis Allan, Janye Lee, and Tara Doolan in their placements.



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