UNIVERSITY OF TORONTO FACULTY OF LAW

nexus

FALL/WINTER 2005

CITIZENSHIP, CULTURE, & DIVERSITY

Understanding the Canadian Landscape

REMEMBERING BORA LASKIN

SPECIAL TRIBUTE: DEAN RONALD J. DANIELS (1995 - 2005)

PLUS

FACULTY NOTES

RECONNECTING WITH ALUMNI

LAW SCHOOL TRIVIA

UNIVERSITY OF TORONTO FACULTY OF LAW

UPCOMING FACULTY BOOKS

WATCH FOR THESE FACULTY BOOKS IN 2006

Women's Access to Justice: the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Professor Rebecca J. Cook (with Simone Cusack)

Health and Human Rights

Professor Rebecca J. Cook (edited with Charles Ngwena)

Dilemmas of Solidarity: Redistribution in the Canadian Federation

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

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The Migration of Constitutional Ideas

Professor Sujit Choudhry

Multinational Federations and Constitutional Failure: The Case of Quebec Secession

Professor Sujit Choudhry

Just Medicare: What's In, What's Out, How We Decide

Professor Colleen Flood

Citizenship as Inherited Property: The New World of Bounded Communities

Professor Ayelet Shachar

The Supreme Court of Canada in the Age of Rights

Professor Lorraine Weinrib

STAY IN TOUCH

CLASS NOTES

It's that time again…

Please submit your "class notes" for the upcoming issue of *Nexus*. Send us 200 words or less about what you are doing in your personal and professional life.

Submissions may be sent by e-mail to kathleen.obrien@utoronto.ca

Or by mail to:
University of Toronto, Faculty of Law
78 Queen's Park, Toronto, ON, Canada M5S 2C5
c/o Nexus class notes

WHAT EVER Happened to…

Have you lost track of a classmate?

Have you lost touch with a law school classmate and wondered what she or he has been up to? If so, drop us a line with the name of a friend you would like to reconnect with and we will endeavour to find them for you. *Nexus* recently caught up with alumni Peter Sutherland '69, Thelma Thomson '48 and Greg Kiez '87. ***Read their profiles on page 6 and 7***

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 President of the Law Alumni Association

Clay Horner '83
President, Law Alumni Association Council

Dear Law Alumni;

It has been my pleasure to have served on the executive of the Law Alumni Association for the past several years and to be your current President.

When Ron announced this past April 2005, that he would be leaving the Law School to become Provost at the University of Pennsylvania, he left a remarkable legacy of accomplishments behind him. Throughout his decade-long tenure, he demonstrated tremendous leadership and vision, steering the Law School through a time of unprecedented growth and transformation and an exciting refinement of its mission. Today, the U of T Faculty of Law stands as one of the world's top law schools, with an exceptional faculty complement and student body, and a number of important Centres, student programs, and community outreach initiatives.

In June 2005, a Search Committee comprised of faculty, students, staff and alumni was struck to begin the important search for a new dean. Today, it is my great privilege and honour to announce that, after an extensive international search, **Professor Mayo Moran** has been appointed the ninth dean of the U of T, Faculty of Law, a position she will hold until 2011. She is the first woman in the Law School's 150-year history to hold this highest appointment at the Faculty.

In the months to come, you will all have an opportunity to get to know Mayo for yourselves. For now, let me provide a brief introduction for those of you who have not yet met this remarkable woman.

Mayo is an exceptional scholar, teacher, and institutional leader. She was teaching high school English in Prince George, British Columbia when the introduction of the *Charter* inspired her to pursue the study of law. After completing her LL.B. at McGill University (1990) and her LL.M. at the University of Michigan (1992), Mayo joined the U of T Faculty of Law in 1995 and quickly distinguished herself as a serious academic and public policy leader. She completed her S.J.D. at U of T in 1999 and since has published a number of articles and books in comparative constitutional law, private law, and legal and feminist theory.

Mayo is widely published, but she is particularly well-known for her extraordinary 2003 book, *Rethinking the Reasonable Person* (Oxford University Press), which explores the historical application of the "reasonable person test" and offers a thought-provoking critique of this enduring feature of our legal system. Her most recent publication, *Calling Power to Account: Law, Reparations and the Chinese Canadian Head Tax Case* (with Professor David Dyzenhaus and published by U of T Press) considers the constitutional dimensions of the Chinese Head Tax litigation and is an important contribution to the literature on Canada's first major reparations case.

From 2000 to 2002, Mayo served as Associate Dean of the U of T Faculty of Law, working closely with Ron Daniels on a number of critical initiatives. Mayo is well known for her vision, diplomacy, energy and compassion. In short, she is an outstanding and accomplished leader and we are all very fortunate to have her as our Dean. Please join me in congratulating Mayo on her tremendous achievement and welcoming her to this new role.

Clay Horner '83
President, Law Alumni Association Council

Professor Mayo Moran has been appointed the ninth dean of the U of T, Faculty of Law, the first woman in the Law School's 150-year history to hold this highest appointment at the Faculty.

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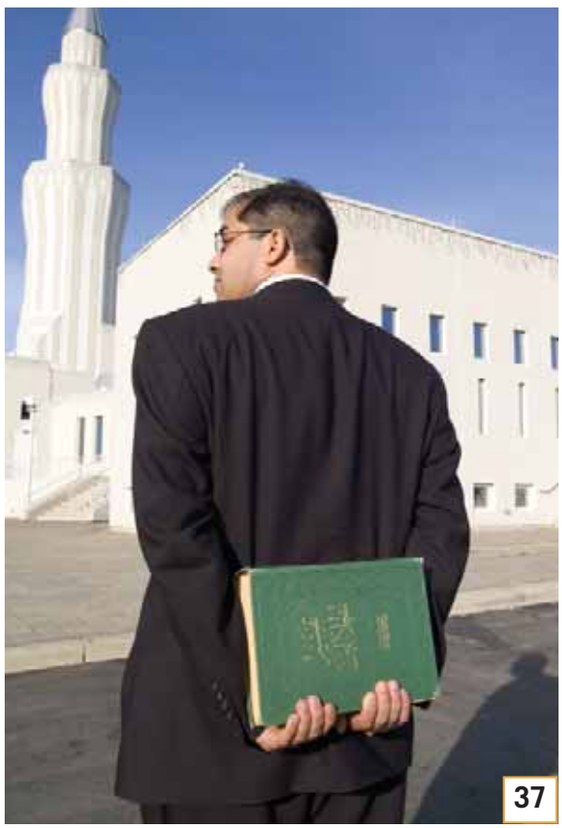

UP FRONT

DEPARTMENTS

ON THE COVER

Pictured here on her First Nation's reserve on the Bruce Peninsula, Sophie Bender-Johnston, daughter of Professor Darlene Johnston, pauses after having performed the Anishinabe girls jingle-dress dance at the Cape Croker Pow-Wow, August 2003. The Pow-Wow is a traditional gathering for social and ceremonial purposes which celebrates Aboriginal heritage with drumming, dancing and feasting. Sophie, who is now 12, is wearing a "jingle dress" made by law grad Dawnis Kennedy ('03), which takes its name from the hundreds of small tin cones attached to the dress with ribbons. The cones jingle musically with the movement of the dancer. Sophie has been taught that the Anishinabe tradition of jingle-dress dancing is a gift from the Creator which, when performed with humility and care, brings healing to the People. Sophie was joined at the Pow Wow by her mother and father, her brother, her grandparents, her aunties and cousins, as well as law grad Allyssa Case ('03), who took the photo.

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FROM THE editor

According to Statistics Canada, over the next fifteen years Canada's new immigrant population will continue to climb dramatically. By 2017, over half the populations of two of Canada's largest cities, Toronto and Vancouver, will belong to visible minority groups. Like many Canadians, I first became aware of our country's great cultural diversity in elementary school, where I was taught about the Canadian "mosaic" as contrasted with the "melting pot" of the United States. Issues of culture, identity and citizenship have intrigued me ever since. Yet while Canada is still one of the few peaceful countries in the world to have such a diverse mix of ethnic, racial and religious minorities living and working in relative harmony, as the articles in this issue of Nexus reveal, we have a long way to go before all citizens of our country feel equally valued, included, and respected.

Citizenship is about more than legal rights. It is about belonging. It is about being a fully welcomed and respected member of our nation state with all of the rights, entitlements and duties afforded other citizens of our society. It is also, as our faculty write, about recognizing and welcoming the many diverse social and cultural practices that constitute our emerging, and historical ethnic makeup.

On pages 32 to 36, Professor Jean-Francois Gaudreault-DesBiens points out the irony of our so-called "national identity," aspects of which are virtually unknown to francophone Quebeckers, a full 20% of our national population. He writes, that if we wish to remain a united country, one mythology of identity cannot overshadow another and claim to represent an entire nation. Indeed, it is quite acceptable, even desirable, he says, to have multiple and fluid conceptions of our national identity. On a related note, Professor Darlene Johnston, an Anishinabe Aboriginal Canadian from the Cape Croker First Nations Reserve, exposes the truth behind Canadian citizenship, at first denied, and then forced upon Aboriginal Canadians. What is needed, says Johnston, if there is ever to be full and meaningful participation by First Nations Peoples in the Canadian political arena, is a more inclusive and respectful approach to the issues and concerns facing Aboriginal communities, rather than a monolithic conception of Canadian citizenship (see pages 28 to 31).

Professor Anver Emon, an Islamic Law scholar who is one of the Faculty's newest members, provides an insightful survey of the historical roots of Sharia law, and challenges our widely held misconceptions about this tradition that drove the recent Sharia debate in Ontario (pages 37 to 39). In an intriguing and provocative piece at page 40, Professor Brenda Cossman writes about the nuances of the new "sexual citizenship" and the unique issues facing our gay and lesbian communities. Until recently, belonging to the nation state, says Cossman, required a particular (ie: heterosexual) identity. Happily, she notes there is a new political relevance given to sex and sexuality. At pages 49 to 51, Professor Audrey Macklin comments on the recently challenged practice of Church Sanctuary for non-citizens of our country, and the tenuous "right" of the Church to delve into this legal and political area. Professors Michael Trebilcock and Ayelet Shachar present new ways of looking at little-known aspects of Canada's historical immigration policies, with a strong case made by Trebilcock for the economic benefits of greater numbers and inclusion (pages 43 to 45), and an endorsement by Shachar of Canada's innovative and highly-copied policy on skilled workers in the global race for new talent (pages 46 to 48). Finally, in a very special guest column, distinguished scholar, author and political scientist, Professor Janice Gross Stein warns us of the very real threat that awaits our country should we become too complacent and smug about our so-called multi-cultural "mosaic" (the Last Word at page 68).

On a bittersweet note, we bid a fond farewell to former Dean, Ron Daniels (see our special tribute at pages 20 to 27) and welcome our new Dean, Professor Mayo Moran, an exceptional woman and gifted academic, teacher and leader. There are many reasons to celebrate Mayo's appointment, just one of which is that she is the first woman in the history of the law school to hold the position. In the months to come you will have an opportunity to meet Mayo and get to know her. Until then, please join students, faculty and staff of our law school in welcoming Mayo to this important new role.

Have a wonderful holiday and happy reading. ■

Jane Kidner '92
j.kidner@utoronto.ca
Editor-In-Chief

LETTERS TO THE editor

WE WANT TO HEAR FROM YOU. PLEASE SEND YOUR COMMENTS TO j.kidner@utoronto.ca.

FROM: W. Alan Newell '52 (B.A. LL.B. Q.C.)

"As a graduate of the U of T Law School I was happy to receive a copy of *NEXUS*, but was rather disturbed by the first paragraph in the dean's message. Reference is made to the fact that "Caesar Wright was responsible for bringing the Law School to the University of Toronto." For many years Dean W.P.M. Kennedy operated a law school in the old building on St. George St. assisted by Professors Auld and Finkelman, and lecturers Gilbert Kennedy, Mr. Labrie, and others whose names I can't recall after all these years. There was an Honours B.A. and an LL.B. course. I remember when Dean Wright arrived from Osgoode Hall to take over from the retiring Dean Kennedy and brought many distinguished staff members with him as I continued on (part time) to complete my LL.B. I don't wish to be meddlesome but do feel that credit should go to those valiant staff, who were the original nucleus of a great school."

FROM: Chuck Schwartz '67

"Congratulations on *NEXUS* winning the Canadian Council for the Advancement of Education, Gold Medal Prix D'Excellence Award. It is well deserved. The publication beautifully blends alumni news, law school news and interesting, thought-provoking topics. Well done."

FROM: Eric Koch '43

"On page 6 of the spring/summer issue of *NEXUS*, in the section *"Did You Know,"* it was stated that in 1949 the Faculty of Law moved to 45 St. George Street. I believe that year is mistaken since I took my LL.B there in 1942-43, with Bora Laskin as one of my professors. I am not sure when the Faculty moved to 45 St. George, but it was prior to 1942/43 when I was there."

RESPONSE FROM THE EDITOR: It's always a pleasure to hear from alumni who have actually lived our history. Thank you for bringing this issue to our attention. Our prior research included several history books from the Bora Laskin Law Library which say 1949 was the year the Faculty of Law moved to 45 St. George Street. It has therefore always been assumed to be accurate since there was nothing recorded otherwise. Interestingly though, we know that in the early 1940s Law became a sub-department within the Faculty of Arts at the University of Toronto. Since receiving your letter, we decided to do some further digging and contacted the University's archivist, Harold Averill. After some leg work on his part, he was able to uncover a document showing that 45 St. George Street, acquired by the University of Toronto in 1925 for $30,000, was known as the "Law Building." It was initially occupied by the Department of Economics, which moved in the summer of 1931 to McMaster Hall on Bloor Street, now the Royal Conservatory of Music. Over the winter of 1931, the building was unoccupied, but in the summer of 1932 it was renovated to accommodate U of T's Department of Law. A name plate signifying the house as the "Law Building" was installed in the summer of 1933. This confirms your recollection, that the Law School was indeed situated at 45 St. George from 1932 onwards, until its next move in 1952. It also clears up a long-standing mystery for us. Thank you for taking the time to write. *[source: insurance files in Physical Plant Department].*

From Our Archives

75 YEARS AGO
In 1930

The first diesel automobile trip in a Packard sedan left from Indianapolis, Indiana to New York City at a total fuel cost of $1.38. Cairine Wilson became Canada's first female Senator. At the Law School, the predecessor to the Students' Law Society, the Law Club, was established to supplement the academic training of the law program. Newton W. Rowell, who would become Chief Justice of Ontario in 1936, was appointed as the Club's first Honourary President, and the Honourary Vice-President was filled by the Dean of the Faculty, W.P.M. Kennedy.

50 YEARS AGO
In 1955

A baby boom year, 1955 saw the opening of Disneyland in Anaheim, California. Pink clothes for men became the fashion rage. The movie, *Seven Year Itch,* was released to rave reviews starring Hollywood actress Marilyn Monroe. Back at the Law School, Albert Abel joined the Faculty to teach constitutional and administrative law. Prof. Abel, who often closed his eyes while giving lectures, was a student favorite during his 23 years teaching at the Faculty. Until his death in 1978, Prof. Abel worked on a book proposing a new constitutional design for Canada, which was subsequently published, posthumously, in the *University of Toronto Law Journal.*

25 YEARS AGO
In 1980

Dave Thomas and Rick Moranis created "hoser" alter egos, Bob and Doug McKenzie, to answer the CBC's demands for "identifiable Canadian content." CNN was launched as the first all news network. The Hon. Frank Iacobucci (LL.D '89), as Dean of the U of T Law School, recognized the increasing inadequacy of the school's library which was first opened in 1961 – and he initiated plans for the Bora Laskin Law Library, a project that was realized under the deanship of Robert Prichard and completed under the Hon. Robert Sharpe. This past year, the Hon. Iacobucci served as Interim President of the University of Toronto and is now a senior advisor at Torys LLP and the Government's Representative leading to a resolution of the Indian residential schools legacy.

contributors

ANVER M. EMON, *B.A. (UC Berkeley), J.D. (UCLA), M.A. (Austin), LL.M. (Yale), J.S.D. (Yale), Ph.D. (UCLA),* is an Assistant Professor who teaches Islamic law and torts. Trained in the Arabic language, Anver's research specialization is in premodern Islamic legal history, and his interests include law and religion, legal history (medieval European and Islamic), and legal philosophy. He has published articles in various journals on topics such as Islamic constitutionalism, Islam and democracy, and the role of religion in a lawyer's work.

JEAN-FRANÇOIS GAUDREAULT-DESBIENS, *LL.B (Laval), LL.M. (Laval), LL.D. (Ottawa),* is an Associate Professor. Admitted to the Québec Bar in 1988, he practiced commercial law in Québec before becoming an academic. His teaching and research interests are constitutional law and federalism (domestic and comparative), legal theory, EU law, corporate law, and the sociology of legal cultures. He has written or co-edited several books, the most recent being *Redistribution in the Canadian Federation* with his colleagues Sujit Choudhry and Lorne Sossin.

DARLENE JOHNSTON '86, *B.A. (Queen's), LL.B. (Toronto),* joined the University of Toronto in 2002 as an Assistant Professor and Aboriginal Student Advisor. In 1995, she resigned her academic position at the University of Ottawa Faculty of Law to coordinate land claims research and litigation for her community, the Chippewas of Nawash First Nation. Her advocacy contributed to the judicial recognition of her people's treaty right to the commercial fishery and protection of burial grounds. Darlene's current research focuses on the relationship between totemic identity, territoriality and governance.

AUDREY MACKLIN '87, *B.Sc. (Alberta), J.D. (Toronto), LL.M. (Yale),* joined the Faculty of Law in 2000 as an associate professor. Previously, she had served as a member of the Immigration and Refugee Board. Her teaching areas include criminal law, administrative law, and immigration and refugee law, and her research and writing interests include transnational migration, citizenship, forced migration, feminist and cultural analysis, and human rights. She has published extensively on these subjects in journals and in collections of essays.

AYELET SHACHAR, *B.A. Political Science (Tel Aviv), LL.B. (Tel Aviv), LL.M. (Yale) and J.S.D. (Yale),* is an Associate Professor whose scholarship focuses on citizenship and immigration law, highly skilled migrants, and transnational legal processes, as well as state and religion, family law, and multi-level governance regimes. Her recent book *Multicultural Jurisdictions: Cultural Differences and Women's Rights,* was awarded the APSA Best First Book Award. Prof. Shachar is currently writing a new book, *Citizenship as Inherited Wealth: The New World of Bounded Communities.*

MICHAEL J. TREBILCOCK, *LL.B. (New Zealand), LL.M. (Adelaide),* taught at the University of Adelaide, South Australia until 1969 when he came to Canada. He joined the Faculty of Law at U of T in 1972, specializing in law and economics, international trade and contract and commercial law. He was honoured with a *University of Toronto Teaching Award* in 1986, elected a Fellow of the Royal Society of Canada in 1987, and was appointed a University Professor in 1990. Prof. Trebilcock is Director of the Law and Economics Program.

BRENDA COSSMAN '86, *B.A. (Queen's), LL.B. (Toronto), LL.M. (Harvard),* joined the Faculty of Law in 1999, and became a full professor in 2000. Prof. Cossman's teaching and scholarly interests include family law, freedom of expression, feminist legal theory, law and sexuality, and law and development. She has written numerous articles in these areas as well as having co-authored *Bad Attitudes on Trial: Pornography, Feminism and the Butler Decision,* and co-edited (with Judy Fudge) *Privatization, Law and the Challenge to Feminism* (University of Toronto Press).

what ever HAPPENED TO...

After graduation, classmates go their separate ways and begin their careers. Years, sometimes decades, slip by. You may find yourself wondering, 'what ever happened to…' To help answer your queries, *Nexus* has tracked down the following three graduates, each of whom has an interesting story to tell.

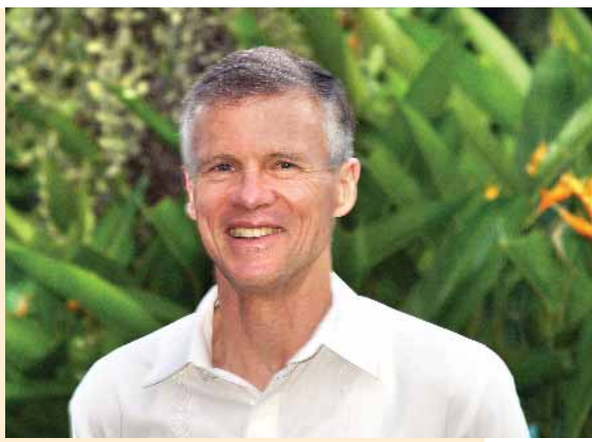
BY KATHLEEN O'BRIEN

PETER SUTHERLAND '69

In 1969, Peter Sutherland, in the middle of his bar admission course, was faced with a tough decision. Should he write the Foreign Service exam and travel the world, or settle down to practice? So he did what most mature, sensible people in his shoes would do – he flipped a coin. "I left it up to fate, and I got heads," he chuckles, recalling the moment. A notoriously difficult program to get accepted into, the exam launched Peter into a new career, one he would pursue after completing his legal training. After being called to the Bar of Ontario in 1970, he packed his bags for Ottawa, planning to return to law someday. "If I could have, I would have done both."

Peter quickly moved up in Foreign Service ranks, gathering valuable business, economic and political experience. One of his first placements was at the United Nations in New York, and later, in the legal department at the Inter-American Development Bank in Washington, D.C. "It's the only time I actually worked as a lawyer." Then Peter moved much further from home. His first Ambassador post was to Saudi Arabia from 1993 to 1996. The hot weather prepared him well for his next post in India, where he was the Canadian High Commissioner (the equivalent to Ambassador) from 2000 to 2003.

It was this time in India that stands out as one of his career highlights. Peter enjoyed working with the large staff of 330 mostly local employees. "India is such a fascinating place with over a billion people from different religious, linguistic and ethnic backgrounds – Hindus, Muslims, Sikhs, Buddhists," he says. "Being able to change posts allowed me to experience a variety of cultural experiences." Another advantage: "Lawyers only change law firms, not the job. So if you don't mind being a gypsy, serving overseas is a lot of fun."



Bouncing between Ottawa and his diplomatic posts in Budapest, Hungary, Saudi Arabia, Africa, and the United States, Peter often finds himself in hot climates. His current posting, as Canadian Ambassador to the Philippines, sees average temperatures that reach 34°, with up to 95 per cent humidity. "That saps your energy," says Peter. "To stay cool and fit in with local customs, I follow the country's national dress code and wear a 'Barang' – a brightly colored long cotton shirt worn outside the trousers with an open collar."

At the end of his posting, in June 2006, Peter will retire from his 35-year Foreign Service career and move back to Canada with his wife, Jo-Lynne, a teacher, and his three grown daughters, Daryn, Dayna and Jamie. "I'll be footloose so will have to find a new home." Wherever he lands, Peter will consider his options "while I still have some energy left." If you have any ideas for Peter, or would simply like to get in touch, please email him at phsutherland@yahoo.com. He looks forward to hearing from members of the class.

THELMA THOMSON '48

Starting a small country practice nearly sixty years ago was far from easy for 1948 law grad, Thelma Thomson. "It was a real problem getting clients," says Thelma. "They didn't believe I was for real – I had to appear in police court to get my name in the papers so people would believe I really was a lawyer."

In her first year at U of T's Faculty of Law, at 45 St. George Street, Thelma was one of the few female students, and new to the law school at that time in a mixed race class. With many young men serving in the war overseas, the faculty had recruited top black students from islands in the Caribbean to keep classes going. Thelma felt an instant connection to the new students who faced isolation and discrimination. To ease their transition, she brought them oranges to help fight off Canadian colds, and had them over for dinner at her parents' house, an act of kindness that met with disapproval from some of her sorority sisters.

Graduating in 1948, Thelma went on to the Law Society's course at Osgoode Hall to complete her legal training. Joining about 250 students, including many veterans who had returned from the war, Thelma continued to feel the pressure of being a woman in a male-dominated profession. "There was a feeling that a woman shouldn't be taking a place that a veteran could," says Thelma. She shortly discovered that finding a firm to accept her for articles would also prove difficult. Relying on her father, who helped Thelma join a large Toronto law firm for $3.50 a week – less than her male counterparts – she was promptly shuffled off to the library so partners could "keep an eye on her" and ensure she wasn't disrupting other lawyers.

After being called to the Bar in 1949 at 27 years old, Thelma left her parents' home and moved to Lindsay, Ontario with her new husband, David, also a lawyer. Using the $1,000 her father gave her at graduation, Thelma and David established a law practice together. She spent the first few years doing whatever it took to build clientele, often going to extraordinary lengths. Like the time she had to meet a client in the middle of a cow pasture to get a signature - or, when she appeared in court wearing her coat, scarf and mitts, because the bailiff had forgotten to light the potbelly stove.

Despite her many obstacles, Thelma had a successful country practice, and raised two sons, Cameron and Bruce. She credits her father for instilling principles that served her well throughout her life. "I had an extraordinary father – one who believed in me. I married the one other man (David) who did," she says. She adds, the hardships confronted by today's female lawyers aren't much different. "We had ten days to reply to documentation. Now it's thrown at you so fast I don't know how you have time to think!" Thelma doesn't regret the circumstances she faced in becoming a lawyer, reminding us that Dean Caesar Wright was tough on all students, not just women, and that same toughness served her well.

GREG KIEZ ’87

Alumnus Greg Kiez considers himself something of a “lone cowboy.” But that’s not the real reason classmates have not heard from him in a while. Most days, Greg spends his time in his 150-year old office, overlooking the 600-year old Galata Port district, in Istanbul, Turkey. “From our Galata headquarters, I can see cruise ships, as well as the small cargo ships which come from Odessa and elsewhere in the former Soviet Union to load light cargo,” he says. Galata is primarily a cruise passenger port, with all heavy cargo and container shipping having moved long ago to other areas of Istanbul. Galata has for centuries attracted a mix of seafarers, tourists and Armenian, Jewish and Christian residents who relax at the pier, sipping strong Turkish coffee and patronizing “hookah pipe” cafés.

This is daily life for the 1987 graduate, who learned to speak Turkish “by ear” once he decided to settle in the country thirteen years ago. Its largest city, Istanbul, has long been romanticized for its crumbling ruins, smoky bazaars, belly dancers and steamy “hamams” or baths, he says. In the past few years, however, it has become an increasingly trendy destination, partly due to the cultural revival helping the city reclaim its heritage. “It’s a safe city to live in – the best city in Europe.”

In 1992, Greg took a break from his Toronto job at Torys LLP as a corporate and securities law attorney to holiday in Turkey. There, he met an ex-Bank of New York broker who convinced him Istanbul needed someone with his skills. The country’s stock market had been closed until the late 1980’s, and the newly emerging area of securities attracted him. A short while later, Greg joined an up-and-coming Turkish brokerage firm, Global Securities, where he established the investment banking department. In 2004, Global Securities was restructured into a holding company, Global Investment Holdings, and Greg became a Director.

Global is a majority owner of Ege Ports, Turkey’s second largest cruise port, a joint venture with Royal Caribbean Cruises (Miami). In 2003, Greg was appointed its Chairman. More recently, his work at Global Investment has included advising a Turkish investor group on the acquisition of two Turkish radio stations in partnership with a Canadian company, CanWest Global Communications Corp. “It was a delight to be working again with my fellow Canadians!” he says.

So what does Greg do in his spare time when he is not making a bid to revitalize Istanbul’s waterfront or acquiring a bottling plant in Kazakhstan? “Hikes along the Aegean Coast, and working out at the gym,” he says. But one of his true pleasures, Greg reveals, is his summer home and gardens at the southwestern tip of Turkey, in Yalikavak, Bodrum. There, he entertains many guests and throws lively parties. Lately, Greg has hosted theatrical fundraisers for the TAY Project (Archeological Settlements of Turkey), a Turkish-based non profit that catalogues the country’s cultural heritage sites. In October, Greg was proud to join A&M University’s Institute for Nautical Archeology as a director.

Recently, a former classmate reminded Greg that it’s not too late to become a famous cartoonist, since he got his start at U of T’s campus paper, *the Varsity,* when he was a student in law school. Anyone wanting to add to the chorus for his return, or who just wants to get in touch with Gregory, can contact him at gregkiez@gmail.com.

Greg Kiez in front of Kiliç Ali Pasha Mosque, in Galata, just steps away from his office.

Photo by Mr. Muhittin Tüylüce of Matris Reklam

DID YOU KNOW?

As you stand in the middle of the “Fireplace Foyer” in Flavelle House – look up – and you'll see one of the more elegant and historically significant ceilings in Toronto.

A popular, quiet reading area for students and lounge for visitors to the Law School, the fine Georgian Hall with its art nouveau ceiling was painted by German-born artist, Gustav Hahn (1866-1962). Hahn painted four floating angels reminiscent of stained glass in the arts and crafts tradition of the late 19th century. One of more architecturally important rooms in Flavelle, the room hosts the only surviving Hahn-painted ceiling in Toronto. The only other in existence was painted in the 1890s, at Paul’s Methodist Church (at Avenue Road south of Davenport), but it was destroyed by fire in April 1995.

Hahn was appointed head of the Department of Interior Design at the Ontario College of Art in 1930. While pursuing an academic career, he served for two decades as the chief designer at Elliott and Sons, specialists in church interiors. Among his public and private mural projects in Toronto, the ones at the Ontario Legislature Building at Queen’s Park and at Flavelle House are recognized on the City of Toronto Inventory of Heritage Properties.

rights to grow on

BY KATHLEEN O'BRIEN

Professor Rebecca Cook

At 8:45 a.m. one October morning, sunlight pours into a dark wood-paneled room during Professor Rebecca Cook's Reproductive and Sexual Health Law class in Falconer Hall. Backpacks litter the floor and it is apparent Starbucks is having a good morning. A diverse class of twelve students – from Canada, the US, Australia, Britain, South Asia, Venezuela and Slovakia – click away on their laptops beside copies of *Reproductive Health and Human Rights: Integrating Medicine, Ethics and Law* – the teacher's book. Wearing a classic grey and black suit, white pearls, and glasses, Rebecca slowly paces back and forth, occasionally glancing at her notes. A reserved, soft-spoken and gentle professor in private conversation, in this environment, her surprisingly strong voice carries to the back of the room as she discusses tough topics such as sodomy, prostitution, and genital mutilation with ease.

Born in Bennington, Vermont, Rebecca comes from a large family of six children – four brothers and one sister. While working for International Planned Parenthood Federation in London, England, she was horrified to learn there was no access to skilled birth attendants in many developing countries, and some parts of the developed world. Realizing mothers and their babies were needlessly dying, "I was determined to find ways to help this avoidable but pervasive problem," she says. After reading an article by medical law scholar Bernard Dickens, Rebecca wrote him a letter. Thus began her interest in women's rights and sexual health – and in Bernard Dickens.

In 1987, while pursuing her sixth degree, a Doctorate in Law from Columbia University, then Dean Robert Prichard invited Rebecca to teach at U of T's Faculty of Law and develop opportunities for students on an international scale to facilitate human rights work. The result was the International Human Rights Program, currently directed by Noah Novogrodsky, which now involves hundreds of J.D. and graduate students and dozens of Faculty members in courses, working groups and internships. In 1995, Rebecca continued her innovation, helping to create an online Women's Human Rights Resources Program (www.law-lib.utoronto.ca/diana/), now directed by Chief Law Librarian Beatrice Tice and Anne Carbert '99, and visited by users from more than 90 countries a year.

During her first year teaching, Rebecca married Bernard, now a fellow U of T professor. "Inspirational," is how he describes her. "She's full of ideas, enthusiasm, and is a practical, strong strategic thinker." Together for 18 years, they enjoy hiking, gardening, and visiting botanical gardens on their travels.

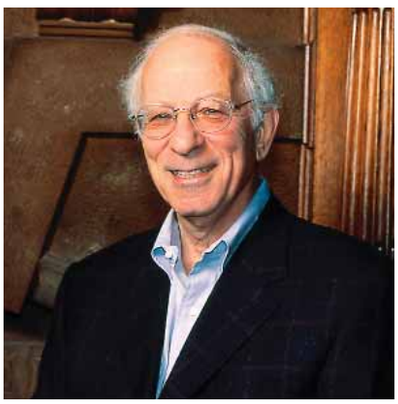
Rebecca is Faculty Chair in International Human Rights Law and Co-Director of the International Program on Reproductive and Sexual Health Law. She is also a professor at U of T's Faculty of Medicine and a member of the Joint Centre for Bioethics and the Centre for Research in Women's Health.

Renowned for her pioneering work advancing safe motherhood through human rights, she has been invited all over the world to speak on teenage pregnancy, access to treatment, maternal death, and HIV-AIDS testing. The international success of her book, *Reproductive Health and Human Rights* (with Dickens and Mahmoud Fathalla, 2003), has led to French, Portuguese, and Spanish translations. Adding to her more than 150 published works, she is currently writing *Women's Access to Justice* (with Simone Cusack) and editing *Health and Human Rights* (with Charles Ngwena). She is also collaborating with similar reproductive health law programs in the law faculties at universities in South Africa, Sherbrooke (Quebec), and Argentina to resist what she calls the "modern day inquisition", and to improve access to essential treatment in reproductive and sexual health care – seeds she hopes will grow. ■

NEWS IN BRIEF

PROF. MARTIN FRIEDLAND RECEIVES PRESTIGIOUS BOOK AWARD

Professor Emeritus, Martin Friedland, has received the *J.J. Talman Award* of the Ontario Historical Association "for the best book on Ontario's social, economic, political or cultural history published in the past three years." His 2002 book, *The University of Toronto: A History*, has also received a *Toronto Heritage Award* and the *Floyd S. Chalmers Award of the Champlain Society*. A Companion of the Order of Canada, Prof. Friedland has had a long and distinguished career with the U of T Faculty of Law, and is best known for his expertise in the areas of criminal law and the Canadian criminal justice system. He is the author or editor of seventeen books, including *Detention Before Trial*, *Double Jeopardy*, and *Access to the Law*, as well as many law review articles and reports. After more than four decades, Prof. Friedland remains a strong presence at the law school where he continues his work on a manuscript, *"Criminal Justice Revisited."* This new study examines from an historical and contemporary perspective a number of areas of the law – including bail, double jeopardy, law reform, gun control, national security, and judicial independence – that he has worked on over the years.



Prof. Martin Friedland

Prof. Trudo Lemmens to Chair Inquiry over Seizure of Medical Research

Prof. Trudo Lemmens

PROF. TRUDO LEMMENS WAS APPOINTED IN JUNE to Chair a three-person independent inquiry on behalf of the Canadian Association of University Teachers (CAUT). He is joined by Thomas Ban (Emeritus Professor of Psychiatry at Vanderbilt University) and Louis Charland (Associate Professor in the departments of Philosophy and Psychiatry and in the Faculty of Health Sciences at the University of Western Ontario). Lemmens, along with co-committee members, has been asked to investigate the seizure of research records belonging to three doctors at the Ottawa Institute of Mental Health Research (OIMHR). The seizure of research records is unique in Canada, and raises a number of important issues including who owns research records, and what are the rights and obligations of institutions and researchers with respect to research records. In this case, the records were seized by the OIMHR administration and the Royal Ottawa Health Care Group (ROHCG). In response to the seizure, the doctors filed a lawsuit which has since been settled out of court. CAUT has asked the three-member committee to investigate various aspects of this case, including the sequence of events leading to, and subsequent to, the seizure of the research records, to determine if there were breaches of institutional or individual responsibility, and to make any appropriate recommendations. A report is expected in 2006. For more information, please visit www.caut.ca.

MAYOR APPOINTS PROFESSOR SUJIT CHOUDHRY TO CITY'S GOVERNANCE PANEL

Prof. Sujit Choudhry

Professor Sujit Choudhry was appointed this summer by Toronto City Council to a three-member external advisory panel that provided advice and support to the City's review of its system of governance. The Advisory Panel has heard from Torontonians since it was appointed, and held its final public session on November 15, 2005. "How cities govern themselves is a critical part of the urban agenda not just for Toronto, but for Canada," says Prof. Choudhry. "If we empower cities jurisdictionally and fiscally, we need to make sure that their systems of democratic self-rule keep pace with their expanded responsibilities." Prof. Choudhry is joined by committee members Martin Connell, a business and community leader and the co-owner of ACE Bakery Limited, and Ann Buller, President of Centennial College, and Chair of the panel. Mayor David Miller, a 1984 graduate of the U of T Law School, praised the committee members for their "capacity for innovative ideas and extensive history of community service and city building." Choudhry, along with the two other panel members, advised the City on how it might structure its governmental powers to be more flexible, accountable, and effective. Their final report was delivered to the Policy and Finance Committee, and will be presented to City Council later this year. For more information, please visit www.toronto.ca/governingtoronto/index.htm.

Professor Patrick Macklem Advises Senate on Proposed First Nations Bill

This past May 2005, Professor Patrick Macklem testified before Ottawa's Standing Senate Committee on Aboriginal Peoples in support of Bill S-16 which provides for the Crown's recognition of self-governing First Nations of Canada. Prof. Macklem, who is a Fellow of the Royal Society of Canada, said that if enacted, Bill S-16 would give First Nations across Canada substantial and real lawmaking authority over their affairs. "Self-government, appropriately defined and contained, is a critical component of sustainability and sufficiency of Aboriginal communities," said Macklem. "Many Aboriginal communities are faltering precisely because they have little control over their destiny. By attaining self-government, Aboriginal communities would be empowered to take ownership of, and responsibility for their future." An expert in constitutional law and indigenous rights, Macklem was a constitutional advisor to the Royal Commission on Aboriginal Peoples and has advised numerous First Nations, Aboriginal organizations and governments on the legal and constitutional dimensions of Aboriginal and treaty rights. He has published numerous articles and books addressing Aboriginal peoples and the law, human rights, constitutional law and international minority rights. His 2001 book, *Indigenous Difference and the Constitution of Canada,* was awarded the Canadian Political Science 2002 Donald Smiley Award for the best book on Canadian governance, and the Canadian Federation for the Humanities and Social Sciences 2002 Harold Innis Prize for the best English-language book in the social sciences.

PROF. LISA AUSTIN CONTRIBUTES TO CANADIAN JUDICIAL COUNCIL REPORT


Prof. Lisa Austin

Professor Lisa Austin was asked to be a consultant to the Judges Technology Advisory Committee (JTAC), a subcommittee of the Canadian Judicial Council, the self-governing body of Canada's top judges. JTAC was asked to advise the Council on whether court documents which are part of the public record ought to be made readily available on-line for those who wish to access them from remote locations. Until now, anyone wishing to see a court document has had to go in person to the courthouse where the specific case is registered and being heard. Improvements to Internet technology and the increase in the number of people with at-home computers have made the possibility of remote access increasingly feasible and desirable. Indeed new guidelines published by the Canadian Judicial Council state that judges' decisions and some case information should be available to the public by remote access. However, the Committees Report, released this October, warns that detailed filings such as affidavits, motion records and pleadings should not be given unfettered remote access and recommends a number of safeguards. Prof. Austin says that while the principle of 'open courts' is crucial, there is a potential for abuse of the information. One way to counteract this threat she says is for personal information, such as phone numbers, addresses and social insurance numbers, to be deleted from court documents made available electronically to the public to ensure people's safety and security.

FACULTY WELCOMES CRIMINAL LAW EXPERT MICHAEL CODE


Michael Code

Michael Code, a criminal law expert best known as an appellate lawyer, has joined the University of Toronto, Faculty of Law as a visiting professor for 2005-2006. For much of his career, Mr. Code has lectured in criminal law and evidence law at U of T's Woodsworth College and Osgoode Hall Law School, and for the past 15 years, in criminal procedure at U of T, Law School. In 2001, he received the Arbor Award from the University of Toronto in recognition of his teaching contributions to the university. Code has argued some of the leading Charter of Rights cases in the Supreme Court of Canada and the Court of Appeal for Ontario, including the *Askov* and *Guy Paul Morin* appeals, as well as testifying as an expert witness in the Brian Mulroney and Gerald Regan cases, and more recently, as prosecution counsel for the OSC in the *Rankin, Felderof* and *YBM* cases and as defence counsel in the Air India terrorism trial. This year, he will publish articles on counsel's duty of civility and on judicial review of prosecutorial decisions in academic journals, while teaching evidence and criminal procedure. For more on Code's distinguished career, log onto the Faculty's web site at www.law.utoronto.ca under "Faculty".

SECTION 15: LOOKING BACK, LOOKING FORWARD


The Right Honourable Joe Clark

ON OCTOBER 28, 2005, former Prime Minister of Canada, Joe Clark, gave the keynote address at a conference held at the law school. Organized by the University of Toronto, Faculty of Law, the Department of Justice Canada (Ontario Regional Office), and the Ministry of the Attorney General of Ontario, *Equality: The Heart of a Just Society, Looking Back, Looking Forward* celebrated the 20th anniversary of the coming into force of section 15 of the *Canadian Charter of Rights and Freedoms.* It offered an opportunity for panelists, including prominent constitutional lawyers, academic experts, former members of the judiciary, government officials and politicians, to reflect upon the momentous origins of Canada's constitutional equality guarantee, its judicial interpretation and application, and its dramatic impact on the lives of Canadians. Clark stressed that the *Charter* has transformed the lives of Canadians and that section 15 has moved equality issues from the periphery to the centre of debate. One of the challenges for Canada will be that of reconciling security threats from terrorism with our commitment to the protection of rights. Section 15, according to Clark, will play an important role in how we deal with that challenge. To hear a web cast of the event, please visit www.law.utoronto.ca/conferences/equality.html.

U of T Professors Cross-Appointed to Faculty of Law

Prof. Ran Hirschl

Prof. Cheryl Regehr

As part of ongoing efforts to enhance the law school's interdisciplinary links to other departments at the University, Professor Ran Hirschl of the Department of Political Science, and Professor Cheryl Regehr of the Department of Social Work were cross-appointed to the Faculty of Law this fall. Prof. Hirschl, whose primary areas of interest include comparative public law, constitutional law and judicial politics, will teach Comparative Constitutional Law and Politics. He has published extensively in leading law and political science journals and is the author of, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Harvard University Press, 2004). Prof. Regehr, who is also cross- appointed to U of T's Institute for Medical Sciences, will teach upper year seminars on law and social work and take an active role in the Faculty's combined JD/MSW with the Faculty of Social Work. She is currently Director of the Research Institute for Evidence Based Social Work at the University of Toronto, Director of the National Centres of Excellence in Child Welfare, and holds the Sandra Rotman Chair for Social Work Practice.

PROF. MACKLEM TO ADVISE ON CANADA RESEARCH CHAIR APPOINTMENTS

Prof. Patrick Macklem

This summer, Prof. Patrick Macklem was appointed to the College of Reviewers for the Canada Research Chairs Program. As College member, Prof. Macklem will judge applications from universities across Canada for coveted Canada Research Chairs. The Program is part of a national strategy to make Canada one of the top five countries in the world for research and development. In 2000, Canada allocated $900 million to establish 2,000 Research Chairs in universities across the country. It is expected that Chairholders will advance the frontiers of knowledge in their fields, not only through their own work, but also by teaching and supervising students and coordinating the work of other researchers. The appointment of Prof. Macklem to this important role is testament to his considerable expertise and academic credentials in a number of areas, most notably constitutional law, international human rights law, and Aboriginal law.

(L - R): The Hon. Peter Cory, Michael Kotrly, Tamara Kagan, the Hon. Madam Justice Kathryn Feldman, Paul Alexander, Nader Hasan and the Hon. Mr. Justice Todd Ducharme.

Grand Moot Delights Packed Moot Court Classroom

ON SEPTEMBER 22, 2005, the law school celebrated one of its finest annual traditions – the Grand Moot. Each September, the Faculty's top student "mooters" participate in a celebration of excellence in oral advocacy. This year, the highly anticipated event topped off a banner year for the Faculty's competitive mooting program, which saw U of T take top prizes in the Jessup, Gale, Wilson, Callaghan and Securities moots. Third year students Nader Hasan, Paul Alexander, Tamara Kagan and Michael Kotrly presented arguments before a distinguished panel of judges that featured the Honourable Mr. Peter Cory, former justice of the Supreme Court of Canada, the Honourable Madam Justice Kathryn Feldman, justice of the Court of Appeal for Ontario, and the Honourable Mr. Justice Todd Ducharme, justice of the Superior Court of Justice. In addition to their vast legal knowledge and many years of experience on the bench, the justices brought with them sharp wits and a refreshing sense of humour. In a spirited dialogue, the justices and students explored the questions of the state's obligation to its citizens with respect to the provision of health services, and the existence of a positive Charter right to life, liberty and security of the person. For more information on this year's mooting program, please visit the Faculty's web site at www.law.utoronto.ca.

2005 ARBOR AWARDS
RECOGNIZE LAW ALUMNI AND FRIENDS

ON SEPTEMBER 12, 2005, members of the University community gathered to honour the loyalty and generosity of alumni and friends who volunteer their time to many of the law school's programs. The Arbor Awards were established in 1989 in order to recognize alumni dedication and volunteer service to the University. Recipients of the 2005 Arbor Awards for the law school were Allen Karp '64, Edward Roberts '64, Jim McCartney '64 and Gallant Yiu-tai Ho, brother of alumnus Betty Ho '77. Prior to joining Cineplex Odeon, **Allen Karp** was a partner with Goodman and Carr. He has spent the last 20 years at Cineplex in various positions including President and CEO and Chairman and CEO. Mr. Karp served on the Faculty's Strategic Development Board from 1998 to 2002. The **Honourable Edward M. Roberts,** now the eleventh Lieutenant Governor of Newfoundland & Labrador, has a long history with the University of Toronto and the Faculty of Law. Recently, he hosted a weekend retreat for 17 alumni from the class of 1964. Recipient, **James (Jim) McCartney,** a Toronto lawyer for McCarthy Tétrault LLP has made generous contributions to the McCarthy Tétrault Electronic Classroom at the Faculty of Law, the Bora Laskin Law Library, and the Class of 1964's 40th anniversary reunion last year. **Gallant Yiu-tai Ho,** founder and owner of the Hong Kong law firm, Gallant Y. T. Ho & Company, has established a number of bursaries at the law school to assist students in need, including the *Walter R. Stevenson Bursary* to honour friend and former classmate John Stevenson '68.

(L - R): 2005 Arbor Awards recipients in law, Allen Karp '64, Mr. Gallant Yiu-tai Ho, and Jim McCartney '64. Not pictured, Edward Roberts '64.

Law School Unveils New Home for Downtown Legal Services

A special dedication and ribbon-cutting ceremony on September 26th marked the official opening of the Fasken Martineau Building, the home of Downtown Legal Services (DLS) at the University of Toronto, Faculty of Law. Professor Brian Langille, and Fasken Martineau Toronto Managing Partner, David N. Corbett, together performed the ribbon-cutting ceremony to officially acknowledge and toast the magnificent space that houses the Faculty's largest student-run clinic. In 2000, Fasken Martineau generously donated $500,000 to provide a new home for DLS at 655 Spadina Avenue. Renovations to the three-storey facility have provided a much needed home for the clinic and its clients. Mr. Corbett says Faskens is proud to have played a key role in furthering the development of this significant community resource. "The work being done by DLS is extremely important and we sincerely hope that this new building will provide a functioning and welcoming environment for those working in the clinic and the members of the community who rely on their services," said Corbett. Professor Langille thanked the firm for its great vision, recalling the days when the basement of Falconer served as the modest administrative space for the clinic. "It was quite lean compared to what we can offer students now," said Langille. "The generosity of Faskens has allowed us to deepen and broaden students' academic experience in a substantial way, and for that we are truly grateful." The gift is part of Fasken Martineau's Legal Education Endowment Program, launched in 2000, which pledged an initial $1 million to support Legal Education in Canada.

(L - R): David Corbett, Toronto Managing Partner, Fasken Martineau Dumoulin LLP and Professor Brian Langille, in front of the new sign marking the official opening of the Fasken Martineau Building, the home of Downtown Legal Services (DLS).

U OF T FACULTY OF LAW MAKES CANADIAN PUBLISHING HISTORY

(L - R): Profesor Brian Langille pays tribute to Professors Lorne Sossin, Kent Roach and Colleen Flood.

Together with the University of Toronto Press (UTP), the Faculty of Law has once again made Canadian publishing history with the publication of *Access to Care, Access to Justice: The Legal Debate Over Private Health Insurance* (Professors Colleen M. Flood, Kent Roach and Lorne Sossin eds.). The book, containing academic papers from a conference of the same name, was published just three weeks after the conference – a record only accomplished once before with the publication of *The Security of Freedom* in November 2001 (Ron Daniels, Patrick Macklem and Kent Roach eds.). The goal of the expedited book is to contribute to the debate on private health care expected throughout legislatures, courts and election campaigns following June's *Chaoulli* decision by the Supreme Court of Canada. The decision struck down Quebec laws prohibiting the sale of private health insurance on the basis that they violate Quebec's *Charter of Human Rights and Freedoms.* Although the narrow 4:3 decision is limited to Quebec, it has implications that flow far beyond those borders. Professor Flood says Canadians deserve to know how the *Chaoulli* decision will affect them and what it means for the future of health care in Canada. "This is a critical juncture in Medicare's history and decision-makers in every province need to discuss how this decision will affect the course of Canada's most enduring social program," she says. In the book, the law school's constitutional scholars and experts in health law and policy join with leading national and international academics and policy-makers to discuss the implications of *Chaoulli.* Chapters include topics such as: What Did the Court Decide in *Chaoulli,* Evidence in the *Chaoulli* Case, Possible Governmental Responses to *Chaoulli,* and *Chaoulli* and the Future of Medicare. The papers are written by leading scholars and commentators with contributors including Roy Romanow, Stanley Hartt, Claude Forget, Andrew Petter, Greg Marchildon, Peter Russell, and many others. To purchase a copy of the book, please call UTP at 1-800-565-9523, or visit www.law.utoronto.ca/healthlaw.

FACULTY OF LAW LAUNCHES "CAPSTONE" PROGRAM

THIS FALL, THE LAW SCHOOL LAUNCHED its first ever "Capstone Program" for third year law students. Initiated by former Dean Ron Daniels, the goal of the innovative program is to provide relevant and timely research opportunities for students in their final year of legal studies. Students are provided with an array of interesting courses on a variety of topics featuring global leaders with specialized legal and policy knowledge. One of the first students to benefit from the new program, Michael Kotrly, chose the Capstone Reading Group in Islamic Law, taught by Professor Anver Emon. Every Monday night for 13 weeks, Kotrly has studied *Sharia* from a critical legal, historical, and political perspective. One of the most fascinating things he has learned, says Kotrly, is how the major authorities in *Sharia – hadith* (the accounts of the practices of the prophet; the other major source being the *Qur'an)* – are often questioned historically, and potentially conflict with one another. After analyzing legal techniques and the medieval history of *Sharia,* the class then moved on to discuss more modern topics, such as colonialism, reformist thought, the advent of the Muslim State, and Islamic family law. Other Capstone courses offered this inaugural year included: the *Future of the Cities* with Toronto Mayor David Miller '84; the *Search for Democratic Ideals* with former Principal Secretary to the Right Honourable Pierre Trudeau, Thomas Axworthy, former member of Parliament, Patrick Boyer '75, former leader of the opposition, Preston Manning, and Les Campbell; the *Canada/US Relationship* with US Ambassador Frank McKenna; and *HIV/Aids in Africa* with UN Special Envoy Stephen Lewis. Alumni who would like to propose Capstone course ideas for next year are encouraged to contact Associate Dean Lorne Sossin at lorne.sossin@utoronto.ca.

GRADUATE PROGRAM CELEBRATES MARKS MEDAL AND HOWLAND PRIZE


Agustin Waisman

For the first time since the program was introduced in 2000, a U of T graduate student in the coursework intensive LL.M. has won the *Alan Marks Medal* for *Best Thesis* for 2004/05. Agustin Waisman, from Argentina, won the award and $1,000 for his LL.M. dissertation, *Relinquishing the Protection of Integrity on Works of Authorship*, which was supervised by Professor Abraham Drassinower. The Alan Marks Medal is awarded by Canada Law Book Inc. in memory of the late Alan Marks, long-time Vice President and Executive Editor, to a graduate student who, in the judgment of the Faculty, has presented an outstanding thesis during the course of the year. Other student award winners this year include Xu (Andrew) Ji from China who received the *Howland Prize for Outstanding Performance* in the LL.M. program for 2004/05 for his thesis, *Specific Anti-Avoidance Rules in the Era of GAAR*, supervised by Professor David Duff. Honourable mention went to Rommel Salvador, for his LL.M. thesis: *Reformulating the Law and Policy on Corporal Punishment in the Philippine Home: Taking a Rights-Based Approach*, supervised by Professor Carol Rogerson.

U OF T LAW SCHOOL WINS 2005 COMMONWEALTH MOOT CHAMPIONSHIP

Two University of Toronto law students, Yousuf Aftab and Mark Elton, took top honours at the 2005 Commonwealth Moot Championship, an international competition held in London, England as part of the Commonwealth Law Conference. From September 11 to 15, 2005, teams from across the Commonwealth, including Canada, the UK, Asia and Africa, came together to compete against each other in mock court of appeal legal cases. Initiated in Hong Kong in 1983, the competition is held every three years, and features law students debating hypothetical legal cases in front of volunteer judges. The U of T, Faculty of Law "duo," now in their third year, argued their case – on the duty of the Canadian government to intervene on behalf of its citizens where they are subject to imprisonment abroad – against 12 teams from around the world. Yousuf also won best oralist. "This is a tremendous accomplishment," said Professor Brian Langille. "The Faculty has a long and notable tradition of fine student mooters, and we are enormously proud of Yousuf Aftab and Mark Elton for carrying on that tradition." Earlier this year, the Faculty took first place honours at the Gale Cup Moot, securing U of T's place in London, England. Coached by U of T law graduates Sidney McLean '05 and Ellen Snow '05, with help from reserve mooter, Amy Salyzyn '05, the winning students were generously sponsored by Toronto law firm Fraser Milner Casgrain LLP and the U of T Law School.


(L-R): Pictured in front are Justices Mance (England and Wales Court of Appeal), Langa (Chief Justice of South Africa) and Goldberg (Australia). In the back row from left are U of T law students and 2005 Commonwealth Moot Champions, Mark Elton and Yousuf Aftab, with Benedict Rogers and Elizabeth Prochaska (a finalist team from City University, London).

FACING THE LEGACY OF INDIAN AND INUIT RESIDENTIAL SCHOOLS IN CANADA

"Canadians have a right to know what we went through," said the Hon. Peter Irniq, former Commissioner of Nunavut, at a special colloquium held at the U of T Munk Centre for International Studies. Organized by the Faculty's Professors Mayo Moran and Darlene Johnston, the colloquium on September 16-18, 2005 offered insights into the legacy of Indian and Inuit Residential Schools in Canada. Experts on truth commissions from around the world, including South Africa, Peru and Australia, discussed case studies of truth-seeking, reparation and reconciliation processes. Harold James Furber, the Inaugural Chairperson of the Central Australia Stolen Generation Corporation, described his experience of being removed from his family in Alice Springs when he was four-and-a-half years old and sent with his younger sister to a Methodist Mission on Croker Island on the north coast of Australia. Other speakers included Alex Boraine, Deputy Chair of the South African Truth and Reconciliation Commission, and José Luis Renique, a historian with the Peruvian Truth Commission. "The colloquium provided an important opportunity to explore how truth commission style processes drawn from the international experience could be fashioned to respond to the distinctive legacy of residential schools in Canada," says Prof. Moran. Residential school survivors added an important perspective to the issue, and many stressed the importance of a truth-telling process in order to gain an acknowledgement of their experiences from Canadian society, government and churches. "Canadian survivors of residential schools do seek compensation, but it is by no means the most important part of what they seek," said one survivor. "Once all Canadians know the truth about this country's historical injustices, there can be healing." The meeting was sponsored by the University of Toronto, Faculty of Law, the International Centre for Transitional Justice (ICTJ), the Munk Centre and the Canadian government.

COMMERCIAL AND CONSUMER LAW WORKSHOP CELEBRATES 35TH YEAR


Sir Roy Goode

The longest running commercial and consumer law workshop in Canada celebrated its 35th year at the U of T Law School this fall. Organized most years by Professor Emeritus Jacob Ziegel, the highly-regarded conference this year welcomed guest of honour, Sir Roy Goode, who spoke on comparative insolvency law developments and in particular the European Insolvency Regulation. Retired for seven years from a titled chair in commercial law in Oxford, Sir Goode praised the conference for its relevance and longevity. "I can't think of anything comparable in North America. It's quite remarkable," said Sir Goode. Born in England, Sir Goode has had a long and distinguished career. Author of 14 books and countless articles, his best-known work, *Commercial Law,* now in its third edition, is widely read and cited by practitioners and judges alike. Sir Goode has played an important role in shaping several areas of legal practice including pensions, consumer credit, and insolvency. At Queen Mary College, he established the Centre for Commercial Law Studies, which has become the leading centre in the world for commercial law research. In 2000, he was knighted for his multi-faceted services to law. Other speakers at this year's Commercial and Consumer Law Workshop included: Hugh Beale, QC, Commissioner, English Law School; Prof Mike Gedye from Auckland, New Zealand; Prof Alejandro Garro of the Columbia University Law School; and Prof Charles Tabb of the University of Illinois Law School at Urbana. Topics ranged from current developments in class actions in Canada and the US, to Bill C-55, the new federal insolvency amendment bill, to the problems of self-representing litigants in court and the treatment of student loans in bankruptcy discharges. Papers are available in cerloxed form and many of them, together with comments on the papers, are expected to be published in the *Canadian Business Law Journal.* For copies of the papers presented, please send your request to secretarial.lawsupport@utoronto.ca.

THE UN AT SIXTY: CELEBRATION OR WAKE?

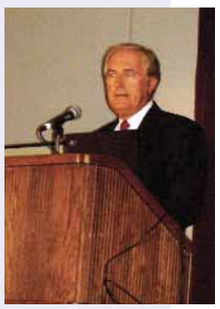
THE SEPTEMBER 2005 UN WORLD SUMMIT in New York, marking the UN's 60th anniversary, was the focus of a two-day conference at the law school on October 6 – 7, which included distinguished academics and practitioners. *The UN at Sixty: Celebration or Wake?* opened with Professor Philip Alston's keynote address at the Cecil A. Wright Memorial Lecture. The following day, conference participants from Canada, the US, Europe and Latin America picked up Alston's themes to consider the challenges of development, disease and environmental degradation as well as the use of force, the prevention of state failure and the reconstruction of societies. The conference closed with U of T Professors Jutta Brunnée and Stephen Toope addressing issues such as why some reform proposals succeeded while many others failed, and what processes need to be engaged now so that we can move forward. Participants pointed to the need to engage domestic populations in the UN and discussed the challenges of involving non-state actors. This event was the inaugural conference of the *Journal of International Law and International Relations,* a new student-run journal supported by the Faculty of Law and the Munk Centre for International Studies. The Journal aims to promote critical, informed and interdisciplinary debate around its titular themes and is publishing its inaugural issue before the end of the year. The papers presented at this conference will form the basis of the *Journal's* second issue which is expected to be published some time in the New Year.

HUMAN RIGHTS SCHOLAR DISCUSSES DEMISE OF UN COMMISSION ON HUMAN RIGHTS


Prof. Philip Alston

ON OCTOBER 6TH, noted international human rights expert, Professor Philip Alston, Professor of Law and Director of the Center for Human Rights and Global Justice, New York University School of Law, delivered the 2005 Cecil A. Wright Memorial Lecture: *The UN's 'Reformed' Human Rights Regime: Three Challenges.* After a warm introduction by Professor Brian Langille, who described Alston as a scholar-reformer in the best tradition of Dean Wright, Prof. Alston took the opportunity to survey the current state of international human rights law and advance a number of proposals for reform to the UN's human rights regime at a crucial time in the organization's history. The system, said Alston, is dominated by western democracies who denounce human rights violations in the poorest countries of the global south with no regard for local realities or homegrown Western atrocities (such as the recent case of Guantanamo Bay). Rather, says Prof. Alston, a new monitoring regime should be sensitive to each country's political context. That is, Canada and the US should be judged by standards set according to their own capacities and self-avowed ideals, not routinely applauded for maintaining better human rights records than Sudan or Myanmar. It is only with such an evenhanded approach that the new body will gain the legitimacy and moral authority that accompanies broad-based credibility. Prof. Alston ended on an optimistic note, observing that the present moment is rife with peril but also unprecedented opportunity to fashion a new human rights culture worthy of the name.

THE FUTURE OF CANADA'S HEALTH CARE


The Hon. Roy Romanow

A conference held at the U of T, Faculty of Law on September 16th, *Access to Care, Access to Justice,* served as a forum to assess the many implications of the recent Supreme Court of Canada decision, *Chaoulli,* which held that long wait times violated s.7 of the *Charter.* The Hon. Roy Romanow, who opened the conference, emphasized that Canada's decisions with respect to health care serve as a window through which to view the nation's future. Renowned health law expert, Professor Bernard Dickens, questioned whether the decision, which was suspended for 12 months, would have any impact outside of Quebec. U of T colleagues Jean-François Gaudrealt-Desbiens and Kent Roach, along with Professor Alan Hutchinson of Osgoode Hall Law School debated the implications of judicial decision-making in the area of health care. Later in the day, the Faculty's Professor Lorraine Weinrib agreed on the propriety of the case being brought as a public interest claim. However, she noted that the court did not go far enough in considering long waiting lists in light of s.7 principles of fundamental justice. Other conference speakers included experts in the health care systems of other jurisdictions, including André den Exter and Stefan Greß who spoke of the public-private health care divide in the Netherlands and Germany respectively. Health Law expert, Professor Colleen Flood of U of T, Faculty of Law rounded out the session, noting that there is a flawed conception in Canada of the ability to divide public and private health care. The final accomplishment of this informative and thought-provoking conference was a book published three weeks afterwards, which includes all the papers presented at the conference, as well as some related papers contributed which were not presented that day. To order a copy of the book please call UTP at 1.800.565.9523.

Evening at Law School Celebrates One of Canada's Top Jurists

(L - R): Ron Daniels, Joanne Rosen, Dr. Ralph & Mrs. Roslyn E. Halbert, Zachary Abella (in back), Rosie Abella, Irving Abella, and Jacob Abella.

It started with an extraordinary gift, and an even more extraordinary group of men and women – just what you'd expect from an evening to celebrate one of the most accomplished and charismatic women ever to graduate from the U of T, Faculty of Law. On Monday November 21st, family and close friends of Madam Justice Rosalie Silberman Abella '70 came together to share in a special tribute to her many achievements and contributions to Canada, including most recently her 2004 appointment to the Supreme Court of Canada.

Abella's close friends – some twenty men and women – wanted to do something special to mark the occasion of Abella's elevation to Canada's highest court. In a remarkable expression of admiration and friendship, they decided to contribute one million dollars to name the law school's most important classroom – the "Rosalie Silberman Abella Moot Court Room."

The special evening began with a warm welcome from Professor Brian Langille who called Abella one of the law school's most treasured graduates, and continued with tributes from close friends Ralph Halbert and Ron Daniels, former Dean of the law school. But it was Abella's two sons, Jacob and Zachary, who provided the highlight of the evening with a warm and witty tribute to their remarkable mother. Jacob (a 1998 graduate of the U of T, Faculty of Law and currently a Policy Adviser for the Privy Council Office of the federal government) and Zachary (a 2002 graduate of Osgoode Hall Law School who most recently was counsel at the Toronto Computer Leasing Inquiry) joked that their mother was a "balanced workaholic" when they were growing up, and shared their special code name for when their mother would "visit" them – "January 14, 1988."

On a more serious note, they spoke of their constant "awe and wonder" growing up at how their mother was able to juggle a punishing work schedule while raising two children, and accomplish so much in her career without ever making them feel neglected. Abella herself gave much of the credit to her husband of nearly 40 years, Irving Abella, an accomplished historian and academic whose 1982 book, *None Is Too Many: Canada and the Jews of Europe, 1933-1948*, won the National Jewish Book Award and was named one of Canada's top 100 most influential books by the Literary Review of Canada. Abella ended the evening with heartfelt thanks to her many friends, including the Hon. Roy McMurtry whom she credited with starting her judicial career. "He appointed me as the first Jewish woman on the Bench when I was just 29 years old and pregnant," remarked Abella. "Take a principled path, he said, and you can achieve anything." Clearly McMurtry knew then what the country would soon find out.

FACULTY OF LAW TEAM RAISES $1,700 FOR UNITED WAY

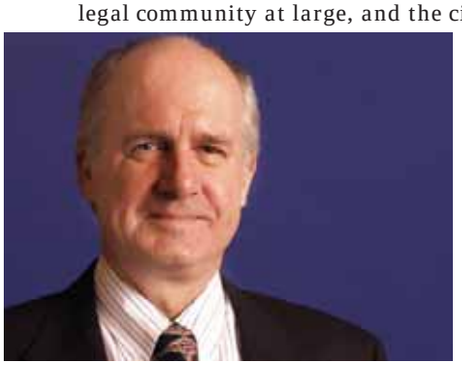
(L - R): In back, Lara Gertner, Lanette Wilkinson, Afsoon Houshidari, Ben Reentovich, Jim Phillips, Lance Paton, Josh Lavine, and Yael Bogler. (L - R): In front, Fabia Wong, Rob Wakulat, Alyssa Borenstein, Stella Luk, and Nadine Dostrovsky.

A rigorous exercise regimen came in handy for a group of 14 law students who climbed 1,776 stairs for charity on October 23rd, 2005. Law student Rob Wakulat (2007) organized a U of T Law Team, which raised approximately $1,700 in the 2005 *Enbridge CN Tower Stair Climb*. The CN Tower hosted the 28th Annual Stair Climb to raise money for the United Way of Greater Toronto and the more than 200 Toronto agencies for which it provides. Professor Jim Phillips, who represented the Faculty, clocked in at a respectable 16:37. The fastest team member was Ben Reentovich (2007), who beat last year's record of 14:56, to finish in at 14:49. This popular annual fundraising event draws thousands of people who want to climb the stairs of the world's tallest building and contribute to a worthy cause. Rob thought it would be fun to enter a law school team, and although the money went to charity, he says it was the students who benefited most from the camaraderie.

Remembering Our Friends

DOUGLAS HEATH BRAWN '72

With the death of Douglas (Doug) Heath Brawn on March 14, 2005, his family, the firm of Brawn Karras & Sanderson, the legal community at large, and the citizens of Surrey, BC, lost a friend, a mentor, and a great contributor to the community. Mr. Brawn was born in Vancouver, the son of Lt. Col. John "Jack" and Margot Brawn. He was one of British Columbia's leading junior amateur tennis players, a sport he would continue playing throughout his life. After graduating from UBC, he attended U of T Law School, where he also played on the hockey team. Graduating in 1972, Doug returned to B.C. where he articled at Sutton Braidwood, and was called to the Bar in 1973. He quickly started his own law firm, eventually forming Brawn Karras & Sanderson with Kim Karras and Kent Sanderson in 1995. At the firm, where he specialized in real estate and banking, he was a teammate, stand-up comic, advisor and leader admired and loved by all. He had a genuine capacity to care and to make people feel important. But Doug's most precious vocation was being a father to his two children, Jennifer, 16, and Geoffrey, 13. He was truly their friend. Doug continued his love for hockey, playing with local teams, and being the guiding force behind the Pacific Steelers Women's Hockey Club as an organizer, coach and "team dad". His daughter Jennifer is also an excellent hockey player. A music fan who loved a good blackjack game in Las Vegas, Doug also found time to sit on the Board of Directors at Kwantlen College, the Board of Trustees at Surrey Memorial Hospital, on the Board of Governors at Southridge School, and more recently, to the Board of Coast Capital Savings Credit Union. Doug is survived by his wife Luana, their two children, his mother, and his sister Stephanie. In his memory, the Doug Brawn Sports Fund has been established to further talented young athletes in need of financial assistance in hockey and tennis. Donations may be made in care of: Brawn Karras & Sanderson, 301 – 15117 101 Ave., Surrey, B.C. V3R 8P7 "in trust" (charitable donation receipts will be issued). Father, partner, friend; he will be sorely missed.



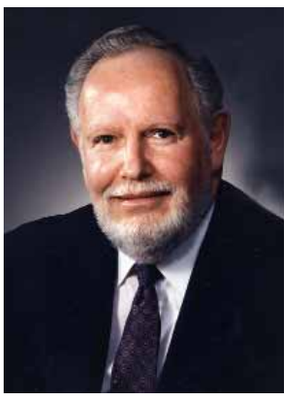
DEREK ANTHONY JULIAN D'OLIVEIRA '76

Derek died of cancer on September 19, 2005, at the age of 53. He was a three-time graduate of the University of Toronto, receiving his B.A. in 1973, his LL.B. in 1976 and his M.A. in 1978. After being called to the Bar in 1978, and for many years, he was an associate and counsel with the firm of Swanick and Associates in Toronto where he specialized in litigation, family law and employment law. An avid reader and book collector, Derek was also a big fan of the arts. He enjoyed going to plays, the opera and visiting art galleries. He will be remembered for his dedication to the law, his kindness and generosity to those in need. Derek is greatly missed by his wife, Valerie, his family, friends, colleagues and clients.

ROBERT W. GOURLAY, Q.C. '74

Robert (Rob) Gourlay died tragically and unexpectedly on June 16, 2005, after an intermittent but lengthy struggle with depression. Rob grew up in Vancouver and attended U of T Law School, where he met the love of his life, Kathleen Keating. They moved back to Vancouver, where Kathleen completed her law studies and Rob joined the Crown Counsel office, remaining there for five years and gaining formative courtroom experience. In 1980, Rob formed a new partnership, Gourlay & Spencer, with Peter Spencer, a close friend since childhood. Rob developed a diverse litigation practice and frequently took on ad hoc prosecutions for the Crown in notable cases. He set high standards both in his advocacy and in his ethics. Early in his career he gained a reputation for his professionalism, integrity and good work. These outstanding qualities were widely recognized in the profession, to which he gave long and dedicated service. He was President of the Canadian Bar Association, BC Branch (1992-93), a member of the CBA National Executive for two terms in the 1990s, and an elected Bencher of the Law Society of BC from 1996 to 2004 (a Life Bencher thereafter). He was also a member and enthusiastic supporter of Lawyers' Rights Watch Canada. Since 1990, many of Rob and Kathleen's happiest times were spent at a ranch property near Merritt, BC, where they took great pleasure in every aspect from grueling maintenance work to long rides through the scenic countryside. Kathleen and Rob have two boys, Matthew and Kevin, with whom Rob shared a love of baseball, politics and Bob Dylan music. More recently, his sons have also taken up his interest in the law. Kevin is in his second year of law school at UBC, and Matthew is in his first year at U of T. On June 24th, hundreds of friends and colleagues gathered in the Great Hall of the Vancouver Law Courts to honour Rob's memory. Family and friends are planning to establish a permanent tribute to Rob which will contribute to mental health research and treatment in the hope that the disease which so senselessly took Rob's life can be prevented from taking others in the future.

GEORGE GLASS '57



George Wilfrid Glass, Q.C. died at the Princess Margaret Hospital in Toronto on June 25, 2005 after a long and valiant battle with leukemia. He was a brilliant, interesting and courageous man who loved life and tried to live it to its fullest. Born in Toronto, George had a lengthy association with the University of Toronto, having graduated from the University of Toronto's Chemical Engineering Program in 1954, and the Law School in 1957. After being called to the Bar of Ontario in 1959, George enjoyed a successful career as a lawyer, both in private practice and in the government of Ontario. He was an expert in the writing of constitutions and was widely sought after by numerous organizations. In 1997, George retired as Senior Counsel from the Office of the Children's Lawyer. Throughout his career, he was deeply involved in many volunteer capacities in the Jewish community. He was particularly proud to have been elected as President of the Beth Tzedec Congregation and serve from 1993-95. George was also involved with the Federation of Jewish Men's Clubs and was widely known and respected throughout Canada and the US for his talent. In his personal life, George was an avid reader, computer whiz and traveler. He spent a lot of time, particularly after his retirement, in New York City and Miami Beach, but always loved to return to his favorite city of Toronto. George was the beloved and adored husband of Helena Diamant Glass, the loving father of Susanne Glass, Karen Glass Halpern and husband Martin Halpern, and the late Robert Glass. He was also the proud grandfather of twins, Rebecca and Simone Halpern. He is also survived by his mother, Anne Glass, and his brother Jesse and wife Nora.

ROBERT N. SINGER '77

After graduating from U of T in 1977, Robert entered private practice. In 1986, he became General Counsel of Vic Priestly Contracting Ltd. in Aurora, Ontario, where he accepted the many tasks and challenges of the position. The job suited his competitive nature, and he always strove to do his very best. The most enjoyable part of Robert's practice was probably the many pro bono sessions with family and friends, which were often held over a brew or a game of cribbage. His varied interests allowed him to touch the lives of many, both young and old. Young hockey hopefuls learned the finer skills of the game when Robert coached his sons' teams for several seasons. His clientele often spanned two generations, and many became personal friends. Over the years, Robert also developed lifetime passions for the guitar, many kinds of music, literature, classic automobiles, cryptic crosswords, and sports – golf and hockey in particular. Robert will be remembered for his keen wit, humour, intelligence, and extensive knowledge of trivia. But it is his warm and compassionate heart that will be missed most by those fortunate enough to have shared any amount of time with him. After a valiant battle with cancer, Robert passed away peacefully on September 26, 2005. He will be deeply missed by his wife Mary, his sons Ryan, Roland, and Raymond, his siblings, extended family, colleagues, and many friends.

USHA KANAKARATNAM '94

Usha passed away peacefully on July 21, 2005 in the Princess Margaret Hospital Palliative Care Unit, at the age of 36, after a seven-year battle with breast cancer. She was much loved and is deeply missed by her parents, Ken and Rani, her brothers Mahi and Jana, her beloved Colin, and all of her extended group of family and friends. Usha had a long-standing attachment to the University of Toronto. In addition to her law degree, she attended the University of Toronto Schools from grades 7 to 13, and completed her Bachelor of Arts degree at Trinity College. While at the law faculty, Usha participated in a number of extra-curricular activities, including DLS, French Club, *U of T Faculty of Law Review* and the women's basketball team. Following her call to the Bar in 1996, she was employed in the real estate department of Rogers Communications Inc. Fortunately, during most of the last seven years, Usha felt well enough to indulge in her passions for world travel, film festivals, baking, entertaining friends, and pickup soccer. Usha was also an avid collector of books, but an even better collector of friends. While at law school, she made many friends to whom she remained close until the very end. A few days before she died, she invited all of her friends to come visit her in the hospital. She told the dozens that arrived how much she appreciated their friendship and support. The feeling was returned tenfold. We were all so lucky to know her. She was taken from us much too soon.

MARYANNE MAGHEKAN KING '00

MaryAnne Maghekan King died unexpectedly in November 2004 in Happy Valley-Goose Bay, Labrador. MaryAnne graduated from the Faculty in 2000, and went on to practice Aboriginal law in Toronto and then Happy Valley-Goose Bay. MaryAnne was an intellectual power-house, a free-spirit and a generous friend and colleague. During her time with us, she played more roles than can be listed here, including: mother of two children, partner, sister, aunt, friend, teacher, student, counsellor, advocate, artist (painter, dancer, seamstress), gardener, runner, story-teller, and businesswoman. As a lawyer, MaryAnne acted for clients from many Aboriginal communities. She brought compassion, conviction and dedication to the practice of law, and had the potential to be a leading advocate in her field. As a mature law student, MaryAnne was a dynamic and respected member of our community, and was considered by many of her classmates to be a source of guidance and wisdom. MaryAnne left us a year ago, but those of us who knew her still see her everywhere.

faculty publications

THE LAST WORD: MEDIA COVERAGE OF THE SUPREME COURT OF CANADA

Professor David Schneiderman (with Florian Sauvageau, Université Laval, and David Taras, University of Calgary)

ISBN: 0774812435
Publisher: UBC Press
Suggested retail price: $85.00 (HC) $24.95 (SC)

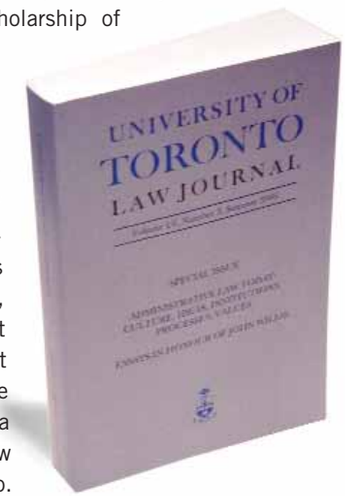
FROM THE PUBLISHER: Media coverage of the Supreme Court of Canada has emerged as a crucial factor not only for judges and journalists but also for the public, which understands the work of the court through the media. Journalists and news organizations decide which court rulings they will cover, and how. Simply put, once judges hand down rulings, they lose control of the message. Journalists have the last word. To show how the Supreme Court has fared under the media spotlight, the authors examine a year of media coverage, and more in depth, four high-profile cases including the Marshall case (Aboriginal rights); the Vriend case (gay rights); the Quebec Secession Reference; and the Sharpe child pornography case. They explore the differences between television and newspaper coverage, national and regional reporting, and the French- and English-language media. The authors also describe how judges and journalists understand and interact with one another amid often-clashing legal and journalistic cultures, offering a rich and detailed account of the relationship between two of the most important institutions in Canadian life.

UNIVERSITY OF TORONTO LAW JOURNAL SPECIAL ISSUE – ESSAYS IN HONOUR OF JOHN WILLIS, ADMINISTRATIVE LAW TODAY: CULTURE, IDEAS, INSTITUTIONS, PROCESSES, VALUES (Volume LV, Number 3, Summer 2005)

Professors Alan Brudner (Editor) and David Dyzenhaus (Book Review Editor)

Publisher: University of Toronto Press Incorporated
Suggested retail price: $25.00 or by subscription

FROM THE PUBLISHER: In September 2004, the Faculty hosted a conference to commemorate the life and scholarship of Professor John Willis (1907-1997), Canada's foremost scholar of public law. Prof. Willis taught at U of T's Faculty of Law for nearly 20 years. The conference brought together scholars from New Zealand, England, the United States of America as well as Canada, and was organized by Professors Harry Arthurs (Osgoode), David Dyzenhaus (Toronto), Martin Loughlin (LSE), and Mike Taggart (Auckland). Prof. Willis was an important part of the Faculty's history. In 1949, he and colleagues 'Caesar' Wright and Bora Laskin resigned from Osgoode Hall law school and joined the University of Toronto. Together, they helped persuade the Law Society of Upper Canada to recognize the LL.B. degree that had been newly established at U of T's Faculty of Law. Prof. Willis went on to teach law at U of T from 1949-1952 and again from 1959 to 1972. He was considered by his students to be among the best teachers they encountered. His first book, *The Parliamentary Powers of English Government Departments,* published in 1933, is still regarded as a classic. Many of his most influential articles were published in the *University of Toronto Law Journal,* which has now published the proceeds of the conference in its special issue of Summer 2005.

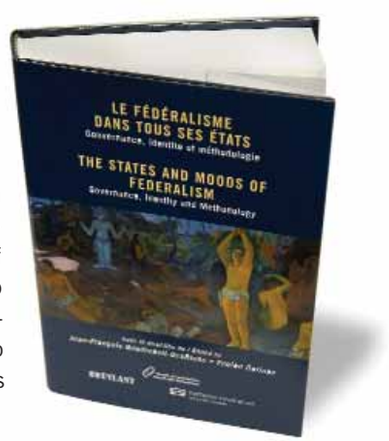


LE FÉDÉRALISME DANS TOUS SES ÉTATS / THE STATES AND MOODS OF FEDERALISM: GOVERNANCE, IDENTITY AND METHODOLOGY

Edited by Professor Jean-François Gaudreault-DesBiens (co-edited with Fabien Gélinas, University of Montreal)

ISBN: 2-89451-796-3
Publisher: Éditions Yvon Blais
Suggested retail price: $89.95 (HC)

FROM THE PUBLISHER: The moods of federalism are swinging. Although the past few years have evidenced a resurgence of interest in the practice and study of federalism, it is has become obvious that the multiplicity of its modern forms complicates our understanding. In fact, while they share a number of fundamental characteristics, federal structures are elaborated in particular socio-political contexts and evolve in unique ways. In this context, the study of the varied expressions of the "federal phenomenon" appears more promising than the traditional understanding of federalism as a mode of state organization. This book aims to recast juridical thinking in a dialogical relationship with political, economic and philosophical thought in this area of research. It is a contribution to the laying bare of ideas of federalism with a view to opening up new perspectives on this complex phenomenon.

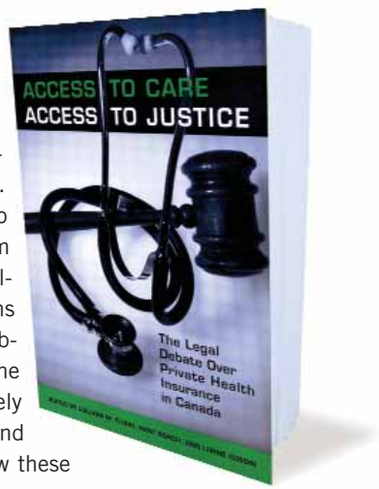


ACCESS TO CARE, ACCESS TO JUSTICE: THE LEGAL DEBATE OVER PRIVATE HEALTH INSURANCE IN CANADA

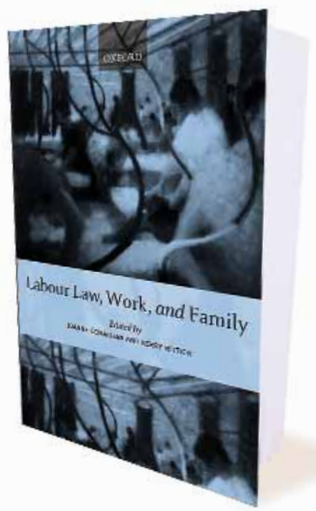
Edited by Professors Colleen Flood, Kent Roach and Lorne Sossin

ISBN: 0-8020-9420-1
Publisher: University of Toronto Press
Suggested retail price: $35 (SC)

FROM THE PUBLISHER: In September 2005, some of the top Canadian scholars in the fields of constitutional law and health policy exchanged ideas and discussed the potential legal course for Canada following the *Chaoulli* decision (June 2005). *Access to Care, Access to Justice* contains all the papers given at this conference, and was published just three weeks later. Historically, the Supreme Court of Canada has avoided direct intervention in health care policy-making, but that posture changed dramatically with the Supreme Court striking down Quebec laws prohibiting the sale of private health insurance. The collection explores the role that courts may begin to play in health care and how this new role is of crucial importance to the Canadian public and their governments. As litigators for those who favour more freedom to provide private health care and aggrieved patients marshal their legal resources, provinces across the country are considering their options. Some are seeking guidance on how to better insulate themselves from review; others may welcome such challenges as a way to revisit the provisions of the *Canada Health Act.* The contributors to this book examine how the future of Canadian health care is likely to be determined both in the courts and in the legislatures and scrutinize how these changes will affect Canadians.



LABOUR LAW, WORK AND FAMILY: CRITICAL AND COMPARATIVE PERSPECTIVES



Edited by Professor Kerry Rittich (with Joanne Conaghan, University of Kent)

ISBN: 0-19-928703-1
Publisher: Oxford University Press
Suggested retail price: $104.00 (HC)

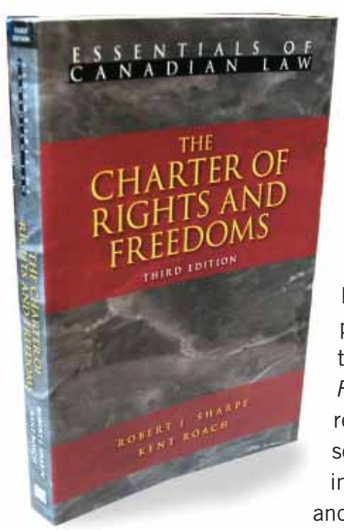
FROM THE PUBLISHER: In recent years, gender has emerged as an important focus of attention in discourse in and around labour law. Gender is gradually moving from the margin to the mainstream of labour law debate, particularly with the development of 'family-friendly' policy agendas in many countries. This book consists of a series of essays from leading international legal scholars exploring the shifting boundary between work and family from a labour law perspective. The object is to assess the global implications for labour law and policy of women's changing roles in paid and unpaid work. Key themes informing the collection include the place of unpaid care work in the performance and structure of productive activity and the implications of the interdependence of work and family activities for the legal regulation of work. This collection is part of an ongoing exploration into the distributive implications of economic and political globalization.

THE REGULATION OF INTERNATIONAL TRADE (THIRD EDITION)

Professor Michael Trebilcock (with Robert Howse, University of Michigan)

ISBN: 0415700345
Publisher: Routledge
Suggested retail price: $52.95 (SC)

FROM THE PUBLISHER: First published in 1995, the third edition of this successful textbook retains its popular features and includes full coverage of new developments including the WTO talks in Doha, national attitudes to the Kyoto protocol and new material on case law. The authors draw their analysis on aspects of the subject from classic and contemporary literature on trade and political economy. Including an introduction to the rules and institutions that govern international trade, this updated book covers news issues such as trade and competition, trade and labour rights, the Multilateral Agreement on Investment, the Basic Telecoms and Financial Services WTO Agreements, and an analysis of the first three years of WTO dispute rulings, including those of the Appellate Body.



THE CHARTER OF RIGHTS AND FREEDOMS (THIRD EDITION)

Professor Kent Roach (with Honourable Mr. Justice Robert J. Sharpe)

ISBN: 1-55221-108-8
Publisher: Irwin Law Inc.
Suggested retail price: $48.00 (SC)

FROM THE PUBLISHER: No other Canadian book provides such an accessible yet thorough and objective account of the *Canadian Charter of Rights and Freedoms.* The text has been thoroughly updated to reflect *Charter* jurisprudence since publication of the second edition in 2002. New cases discussed include *Chaoulli v. Quebec, Auton v. British Columbia* and *NAPE v. Newfoundland.* The book also covers the history of the *Charter,* legitimacy of judicial review, limitation of *Charter* rights, *Charter* litigation, language rights, equality rights, and *Charter* rights of the criminally accused.

"In a decade of leadership, Ron has left us with a remarkable legacy, and we can only hope that a decade from now, we can say that we have done him proud in an increasingly globalized world."

Professor Rebecca Cook
Faculty Chair in International Human Rights Law

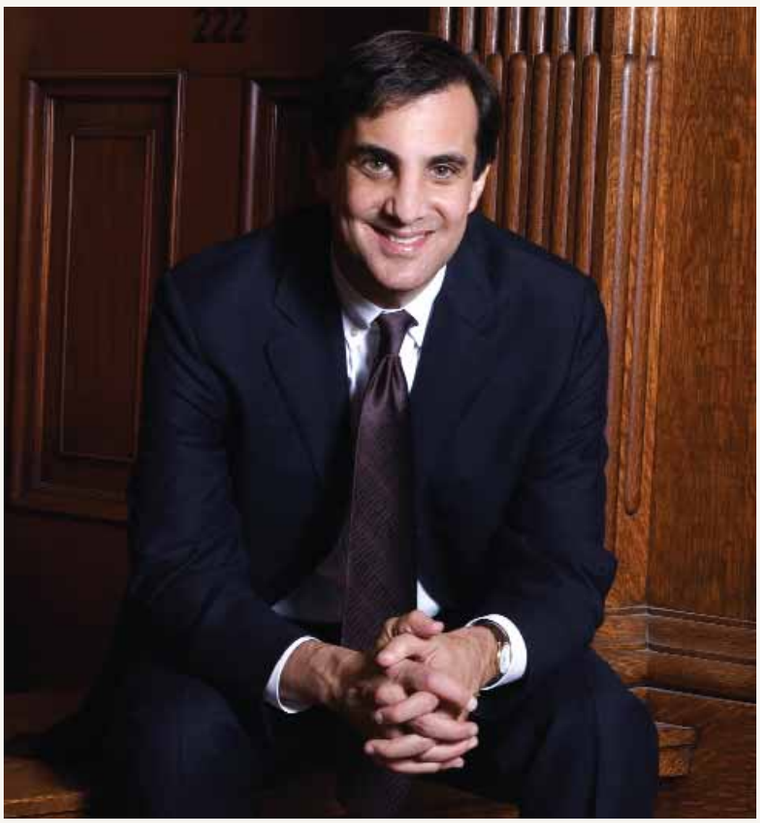
"Ron's commitment to attracting the best faculty to create a superior learning environment at the law school was unwavering and led to the wide variety of courses taught by leading scholars at U of T that is simply unparalleled in Canada."

Kirby Chown '70
former President of the Faculty's Law Alumni Association Council, and Managing Partner of McCarthy Tétrault LLP

A Decade of Inspired Leadership

Ronald J. Daniels
Dean, U of T, Faculty of Law, 1995-2005

A Tribute to our Leader, Colleague, and Friend



"When Ron called me to say that he would be moving to the University of Pennsylvania, my immediate reaction was that the law school, the university, and the country were losing one of their great natural leaders – and that, more selfishly, I was losing my best friend."

Professor Michael Trebilcock

In the spring of 1995, Ronald J. Daniels was appointed the eighth dean of the University of Toronto's modern Faculty of Law, succeeding a long line of visionary deans, including most recently Martin Friedland (1972-1979), the Hon. Frank Iacobucci (1979-1983), J. Robert S. Prichard (1984-1990), and the Hon. Justice Robert Sharpe (1990-1995).

"It was my privilege to work together with Ron on many projects from their very inception, and it was quite a ride – one that included regular late night telephone calls from Ron, just to bounce off an idea or ten, and countless emails sent when most of the reasonable world was fast asleep. I look back on my days at the law school with fondness and great pride, and Ron is, in large part, responsible for those sentiments. But beyond the law school relationship, he is a loyal, generous and supportive friend."

Madam Justice Bonnie Croll '77
Superior Court of Justice; Former Assistant Dean of Students, U of T, Faculty of Law

"Empathetic. Articulate. Enthusiastic. These are the qualities that make working with Ron Daniels such a satisfying experience. Of course, he is intelligent, well read, industrious – all the usual virtues – but those are table stakes. Without them one does not play in this league. The sizzle is in the three I mention."

Jim C. Baillie '61
Senior Partner, Torys LLP

At the time, he was just 34 years old, the youngest dean of any law faculty in North America, and had recently celebrated the birth of his fourth child with his wife, Joanne Rosen, also a graduate of the law school and accomplished human rights lawyer. Six years later in 2001, barely into his 40's, and with a remarkable record of achievement under his belt, Ron Daniels became the first dean in the Faculty's 150-year history to be appointed to a second term. He would continue at the helm of the law school until this past June 2005, when he was appointed Provost of the University of Pennsylvania, the second non-American to hold the position.

Ron's trademark passion, boundless energy and exceedingly high standards helped to transform every dimension of the law school – from its academic programs, undergraduate and graduate curriculum, student services, and financial aid – to its public interest initiatives and faculty complement – even its physical space. Virtually every nook and cranny was examined and ultimately dramatically improved as a result of Ron's "magic" touch.

When he wasn't racing between teaching commitments, spearheading a major international conference, making Canadian book publishing history, or raising a half-million dollars to establish a new clinic building, Ron could be seen flipping hamburgers at the annual student BBQ or singing karaoke at the law school's talent night. Whether in a navy suit and tie, or jeans and t-shirt, Ron seemed to be omni-present.

Reaching Out to Communities in Need

Many have noted over the years Ron's endless thirst for new ideas – and seemingly limitless energy to implement them. Of his many passions, none was more palpable than his commitment to community outreach and instilling a pro bono ethic in law students at an early stage in their careers. In that regard he is considered a pioneer among Canadian law deans.

Early in his tenure, Ron signaled his commitment to the broader community through the founding of Pro Bono Students Canada (PBSC), a national organization headquartered at the U of T Law Faculty and which today operates at every Canadian common law school. With a keen eye for talent, Ron recruited 1995 law grad, Pam Shime, to direct the program. Today, PBSC is responsible for placing approximately 2,000 law students annually with local community-based organizations, where students volunteer nearly 8,000 hours each week during the school year.

"Little was impossible in Ron's eyes," says Downtown Legal Services Executive Director, Judith McCormack, who Ron also recruited to the law school. She recalls that very early on, he was able to secure a $100,000 annual increase from Legal Aid Ontario, and remarkably, obtained the same amount for each of the clinics at the other five law schools in Ontario. He then followed it up with generous academic support and infrastructure from the faculty, catapulting the clinic into a different league from its former existence. One of the most dramatic

envisioning a global law school...

"Dean Daniels will be remembered as the academic leader, who through ingenuity, drive, intelligence, and wit, made the University of Toronto a global law school – Canada's only global law school. He gave it vision and energy for law and development, law and human rights, pro bono activities, and innovation of law and policy. All of these will outlive Ron's term because they fit a global legal mosaic that is intensely under construction. When we at Yale Law School think of our Canadian partners in the struggle for human rights, rule of law, and global constitutionalism, we think first of Toronto, because of Ron and the brilliant colleagues he has assembled in Falconer and Flavelle. I am thrilled that a man I consider to be my brother will now rule the City of Brotherly love, but for tonight let Yale Law School say to our proud son, Ron, you stand on the principles of 'LUX ET VERITAS' that must guide a new global century!"

Dean, Harold Koh
Yale Law School

Top Photo (L-R): Arif Virani '98, Ron Daniels and Prof. Kevin Davis '93

improvements to DLS and the clinic program more broadly, was the establishment of a three-storey, 7,000 square foot dedicated building supported by Toronto law firm, Fasken Martineau DuMoulin LLP. As a result, over 9,000 low income clients now receive free legal services each year from students at DLS, and 70% of the first year class participates in the clinic.

"Key to it all was Ron's respect of plurality of views, and broadmindedness."

Ron was also one of the first Canadian law deans to recognize the importance of assisting students as they navigate the path to summer employment and articles. In 1996 he established a focused career development office, the first of its kind in Canada, which would eventually be staffed by several lawyers, including one dedicated solely to assisting students seeking public interest and non-traditional legal careers. "Before Ron created the CDO, students had to fend for themselves as they faced an array of legal career choices," says Bonnie Goldberg '94, Assistant Dean of Career Services (2000-2005). "By spearheading and then supporting a dedicated career office, Ron ensured that our students would be able to pursue limitless opportunities in Canada and beyond."

Most recently, Ron's vision led to the launch of a new partnership with the Toronto District School Board with the goal of bringing legal themes and education into the curriculum of two downtown high schools and inspiring disadvantaged students to consider university as a credible option for their future. Ron's brainchild, the LAWS program (Law in Action Within Schools) was modeled after similar programs in inner-city New York schools where high school completion rates are a fraction of the national average. Former law student, Cornell Wright '00, who spoke at the launch this past spring, recalls Ron's early commitment to disadvantaged communities. "Ron was hugely supportive of an annual outreach program for high school students from visible minority backgrounds. The program made these students feel like members of the law school community, and I was proud to be associated with it."

A Global Vision

Another hallmark of Ron's tenure was his keen understanding of the Faculty's importance as a public policy leader and the need to be both relevant and responsive to pressing political, economic and social issues. Internationalization of the faculty's program was a foundational element of his influence in this regard. "Ron was committed to making the University of Toronto a great international law school capable of addressing global problems," says world renowned scholar, Professor Rebecca Cook, Faculty Chair in International Human Rights Law. She adds: "Key to his vision of a global

"Ron embraced clinical education both as a source of innovative pedagogy, and as an opportunity to cultivate a pro bono ethos in students. He left us not only with a transformed clinical program, but with his trademark sense of limitless possibility for the future."

Judith McCormack
Executive Director, Downtown Legal Services

"Thanks to Ron's vision and ability to bring on partners for every new idea, the law school stands alone in its ability to send out a cadre of students each summer to work with communities in need across Canada."

Pam Shime '95
National Director, Pro Bono Students Canada

(L–R): Ron, Justice Aharon Barak and Joanne Rosen '86

(L–R): Rob Prichard '75, Ron, Jeanette Williams and The Hon. Robert Sharpe '70

law school was his conviction that we can compete successfully through our teaching, scholarship and service."

Cook is quick to point out the multitude of enhancements that have taken place under Ron's decade of leadership. One of the first initiatives was an innovative program that brings up to 25 internationally distinguished professors and jurists to teach at the Faculty each year. Indeed, the classroom experience has virtually been "transformed" says Cook by an increasingly diverse student body, and by the development of teaching modules on the recognition of same sex marriages, conflict of laws and transnational legal problems to name just a few. Faculty scholarship has also evolved, she says, to respond to the ever increasing policy challenges. Students too have benefited with new initiatives aimed at ensuring they are competitive in an increasingly global market, such as through new student-edited law journals including ones on indigenous, equality, and international law matters, and exchange programs that today involve nearly a third of all upper year students. "Key to it all," says Cook, "was Ron's respect of plurality of views, and broad-mindedness."

One of the most notable and transformative of the many initiatives he spearheaded, the creation of an International Human Rights Clinic stands out as the first of its kind in Canada. Clinic Director, Noah Novogrodsky, testifies to Ron's unwavering support of the program and his keen understanding of the knowledge and experience to be gained from scholars and legal activists around the world. In that regard, Ron and Novogrodsky initiated the Faculty's first "capstone course," a directed research project that allowed third-year J.D. and graduate students to conduct targeted research for Stephen Lewis, the UN Envoy for AIDS in Africa.

As a result of Ron's global vision, a number of timely conferences on matters of public concern were hosted at the law school. For example, in the early days following the terrorist attacks of September 11, 2001, Ron spearheaded an international conference to examine the proposed new anti-terrorism bill. Less than three weeks later, the proceedings of the conference were published in a book that made Canadian publishing history and resulted in amendments to key clauses of the government's proposed bill. This "model" of ensuring a timely response by the academy to issues of public policy would be repeated many times during Ron's remaining four years at the law school – on issues including allegations of systemic racism in the Canadian Criminal Justice system, multiculturalism and diversity, the accreditation of foreign trained professionals, the future of public universities, and private health insurance following the

"Ron was a dynamic teacher and leader and achieved so much during the time I worked as his assistant – new technology, a new DLS clinic building, a career development office, financial aid and bursaries for students, a financial aid department and counselor, and the Centre for Innovation Law and Policy. He accomplished all of this and so much more during the five years that I worked as his assistant; and remarkably he also continued to teach and chair various committees on and off campus. It was such a pleasure for me to have worked with him."

Jeanette Williams
Dean's Secretary from 1986 - 2000

from tim-bits to corporate governance...

When I joined the faculty in 1989, third floor Falconer was the hub of law and economics and arguably the best place on the continent for a young scholar in that interdisciplinary field. Ron Daniels, Bruce Chapman and I arrived there within three years of each other and we were joint beneficiaries of Michael Trebilcock's inspiration, wisdom and guidance. The energy on the floor emanated from Ron and the rest of us drew heavily from it. Perhaps my most vivid memory from that period is of picking up the phone to hear Ron say, simply: "Tim-bits". While any other person would recognize these as the decadent artery-blocking donut cast-offs, it had become code to us: it was Ron's invitation to discuss a new idea or initiative, at the Tim Horton's in the museum next door. Short of cancelling class, I knew that whatever I was working on would have to wait. Thanks to Tim-bits, Ron brought me along in many new initatives: a highly successful conference on stakeholders in corporate governance, a visit to Hungary with the international business and trade law programme to discuss business law in the transition from communist rule, a coauthored article on interactive corporate governance, to name only a few. Although our Tim-bits routine is far behind us (fortunately, for our arteries), Ron took his creative energy to become the most dynamic law dean of our generation.

George Triantis '83
Perre Bowen Professor,
University of Virginia School of Law

"What Bora Laskin and Caesar Wright did to legal education in Ontario pales in comparison to Ron's achievements. He transformed this faculty, and made it a truly special place to learn and teach. He raised our sights, and he transformed Canadian legal education in the process. Our greatest challenge now is to try to get him back."

Prof. Patrick Macklem '84
U of T, Faculty of Law

"Ron was a visionary leader who was able not only to help us articulate the aspirations of the law school but also to realize them, even in the face of daunting obstacles. One of his most striking qualities as Dean was his unbounded optimism and energy – his belief that if you have a good idea, there is always a way to make it happen. He will be much missed."

Prof. Carol Rogerson '82
U of T, Faculty of Law

Ron is joined in his office at the law school by his four children, (L-R): Robbie, Ally, Ryan and Drew.

(L–R): Dean Harold Koh (Yale Law School), The Hon. Justice Guido Celebresi (former Dean, Yale Law School) and Ron

(L–R): Madam Justice Rosalie Silberman Abella '70 and Ron

(L–R): The Hon. Bob Rae '77, Ron and Walter Fox '65

"There is no doubt in my mind that Ron's achievements, which today we consider legendary, will soon be considered iconic. He is a phenomenon – a unique and magical combination of brilliance, compassion, and vision – all selflessly donated to the law school. There is no one like this improbable giant."

Madam Justice Rosalie Silberman Abella '70

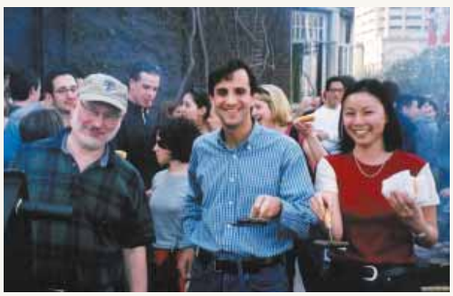
Chaoulli decision.

The Academic Mission

More than anyone else, Ron knew that exceptional faculty and superb classroom experience were critical to continue to attract the very best students from across the country. Fuelled by the establishment of 16 endowed academic chairs, the number of full-time faculty at the law school nearly doubled over the past 10 years, from 31 in 1995, to close to 60 today. While other universities struggled with increasing enrollment and large class sizes, the U of T Law School's student-faculty ratio actually shrunk – from 18:1 when Ron first started as dean, to an impressive 10:1 today – one of the very best in North America.

Ron also ensured that new faculty members were recruited to teach in a number of critical areas of scholarship including Darlene Johnston in Aboriginal law, Andrew Green in Environmental law, and most recently Anver Emon and Mohammad Fadel in Islamic law, to name just a few. "What attracted me to the Faculty was Ron's global vision for the study of law," says Emon. "I see and feel Ron's legacy everywhere, and it's an inspiration to be a part of this place."

"Our exchanges were always lively, fun and provocative, and my work was always the better for it."



(L–R): Prof. Arnold Weinrib '65, Ron and Lois Chiang '95.

(L–R): Prof. Darlene Johnston '86, Ron and Maya leader.

Professor Brenda Cossman agrees that Ron's broad academic focus was an important motivating influence. "Ron was incredibly supportive of my academic work, which inhabits a very different intellectual universe," says Cossman. "Whether it was same-sex marriage, adultery or the legal regulation of pornography, Ron's intellectual curiosity ran deep. He not only generously supported my work as Dean, but our exchanges were always lively, fun and provocative, and my work was always the better for it."

Today, almost half of the Faculty's professorate is cross-appointed to another

an understanding and compassionate ear...

During Ron Daniel's tenure as Dean of the University of Toronto's Faculty of Law I was a student in the Juris Doctor degree program. I was culture-shocked by my initial law school experiences and struggled to create a sense of belonging within the faculty. All the people involved with the University of Toronto First Nations House and the students, staff, faculty and administration of the Faculty of Law supported my efforts to create a space within which I felt a part of my new school. Ron Daniels was no exception to this.

Ron supported numerous initiatives that provided me with opportunities to contribute to the Faculty of Law and the University of Toronto in ways meaningful to me including, the *Indigenous Law Journal*, the June Callwood program in Aboriginal Law, the Faculty of Law's Diversity Committee and the events hosted jointly by the Faculty of Law and First Nations House. Ron also supported me personally, by assuring me that the Law School did not make a mistake in my admission, by not being perturbed that I ditched the Dean's Welcome Dinner to sing his children hand-drumming songs in his basement, by listening to my frustrations, concerns and ideas during the Dean's Student Office Hours, by supporting my choice to miss classes to maintain my connection to my community, and by confirming that my contributions to the school were valued. For this I would like to say Miigwetch, your support helped me to feel that I belonged.

Dawnis Kennedy '03

"Ron has earned a place along with former Dean, Caesar Wright (1949-1965) as the two people who have most profoundly affected change in our institution, and left us that much better for all they did in their long terms of service. He is an oustanding example of just how much a dean can accomplish with clear and high goals, and endless energy and determination to realize them."

J. Robert S. Prichard '75
President and CEO Torstar, Former Dean, Faculty of Law (1984-1990), Former President, University of Toronto (1990 - 2000)

"At no time in the history of the law school has it moved further and faster than under Ron's stewardship and time as Dean. He had the courage and the determination to put in place the infrastructure that is needed if we are going to realize the dreams that we have set for ourselves."

Prof. David Beatty
U of T, Faculty of Law

"Ron Daniels was an outstanding colleague in every respect. He brought to his Deanship a vision of an interdisciplinary and internationalized Faculty of Law, and worked tirelessly to achieve his dreams for his Faculty and for the University of Toronto. He never lost sight of the need to ensure access for all qualified students and to encourage students and lawyers to serve their communities through pro bono work. He extended his concern for the less advantaged to the international arena, as co-founder of an innovative international organization providing low-cost legal services to developing countries in their trade negotiations with the developed world. Ron was an absolutely superb Dean and colleague, who achieved and helped others achieve excellence. He will be greatly missed in Canada."

Heather Munroe Blum
Principal and Vice Chancellor, McGill University

division of the University, and their long list of prestigious honours includes several Killam and Connaught awards, two Molson prizes, four appointments to University Professor (the highest rank a university can confer on one of its members), and countless book prizes. Indisputably, all were made possible, in part, by Ron's deep and unwavering commitment to the scholarly enterprise.

Facing Challenges Head-on

Clearly Ron had many lofty goals. However, he also knew all too well that high aspirations require significant financial resources – and he was willing to put in long hours to convince others of the need to support the mission of the school. Indeed he was all but compelled to do so in 1995, when just months into his new job, the provincial government of the day announced dramatic cuts to post secondary education funding. It was a devastating blow to the law school and its academic programs. For some it might have meant defeat – for Ron, it was a challenge he was prepared to meet head-on.

In order to meet the ambitious vision of excellence, a range of resources were required, including private donations and tuition increases. With his persuasive determination, over the next few years Ron was singularly responsible for the revitalization and almost 60-fold increase in the Faculty's resource base. What began as a fledgling capital campaign developed into the most successful campaign ever undertaken by a Canadian law school. In 1995, at the beginning of Ron's term as dean, the Faculty's endowment was set at $1 million. By 2004, it had virtually exploded to an extraordinary $57 million. As a result, the Faculty's financial aid endowment grew, enabling the law school to counter tuition increases by disbursing $3.5 million annually in needs-based student financial aid (compared to just $150,000 in 1995). It has also meant that for a number of years now at least 65% of the first year class receives financial aid, and each year 40 law students attend the law school tuition-free. Finally, under Ron's leadership, the law school was the first in the country to have an innovative back-end debt relief program allowing students to pursue lower-paying careers, as well as a front-end program providing interest-free loans during their studies. As a result of his commitment to student aid, despite increases in tuition, the law school's most recent entering class is the strongest in its history as measured by LSAT and GPA scores. Another hallmark of the entering class is a consistantly equal gender divide and a nearly 30% minority representation (up from 20% in 1995).

(L–R): Raj Anand '78, Prof. Rebecca Cook and Ron

(L–R): The Hon. Stephen Goudge '68, Ron and Prof. Sujit Choudhry '96

It has often been said that one of the

hallmarks of a great leader is an ability to lead not only in good times, but in difficult – and that it is not in times of triumph, but rather in adversity, that one's true character is revealed. Severe cuts to post secondary funding would be just one of many obstacles and setbacks Ron and the Faculty were forced to face. Chief Administrative Officer, Kathy Tam, who worked very closely with Ron over much of his time as Dean recalls a number of those difficult moments, including staff restructuring, the budget cut crisis, and negotiations with the university on tuition sharing. "Ron was always thinking ten steps ahead of everyone else," she says. "It was Ron's persistence and determination that allowed us to pursue many projects that advanced the Faculty."

(L–R): Ed, Frank and Nancy Iacobucci and Ron

Throughout his decade of leadership, of the many attributes Ron was renowned for, none was more profound than his ability to unite faculty, students, alumni and others in a common goal and achieve broad consensus, while never losing the momentum needed for reform and transformation. This defining characteristic was made all the more noteworthy when one considers the ideological differences and disparate scholarly interests of the many stakeholders he worked with.

Powerful evidence of the Faculty's loyalty to Ron came this past June, when in an unprecedented show of gratitude and appreciation, many faculty and staff of the law school came together to raise $300,000, with University matching funds, in support of the *"Ron Daniels and Joanne Rosen Student Bursary."* There has been no dean in the University's history who has received such a clear and unequivocal demonstration of admiration and support from his community.

Professor Michael Trebilcock summed it up best at Ron's farewell dinner this past June, when he said: "Despite the sweeping nature of [the] changes, the attendance tonight of faculty, staff, spouses, partners, and former faculty members and deans is testimony to the remarkable consensus that [Ron] was able to forge around this set of transformatory initiatives." We congratulate Ron and look forward to his return to Canada. ■

raising the standard of academic excellence....

Ron Daniels' greatest achievement as Dean was not that he raised lots of money, nor that he was able both to have great ideas and to implement them. His greatest achievement was to raise our own expectations of what we could as a faculty achieve academically.

After all, we are first and foremost scholars at Canada's leading research-intensive university. Ron made us think of ourselves as scholars who are in the same league as our peers at the world's leading law schools, which is the biggest step one can take to putting us in that league. I understand that there are problems which attend how to evaluate legal scholarship by international standards that might not attend, for example, philosophy. Law schools have obligations to the profession of law as well as to the academy. And legal writing on Canadian topics will often not be publishable out of Canada. In my view, we still as a Law Faculty have to come to some developed understanding about how to deal with the issue of standards, at the same time as we preserve the kind of pluralism in scholarship that is the mark of a thriving academic centre. But my sense from elsewhere, from the places that Ron wanted to be our comparators, is that the real issue is, as Ron clearly saw it, raising the standard, and not the issue of dictation of the kind of scholarship people should do. Joyce Carol Oates (Princeton) once remarked of Alistair Macleod that his stories about Newfoundland help us to catch a glimpse of what is universal in the most deeply parochial. At the risk of some exaggeration, I would venture that Ron left us with the sense, one which can be as daunting as it is exciting, that we should all be striving for that same glimpse.

Prof. David Dyzenhaus
U of T, Faculty of Law

Flag bearers: Giles Keeshig, Korean War Veteran (Canadian flag); Ronald Johnston, Korean War Veteran (American flag); Ted Johnston, UN Peacekeeper (United Nations flag); and Ross Johnston, World War II Veteran (RCAF flag) pictured here at a Remembrance Day Ceremony, November 11, 2004, at the Cape Croker Reserve. The Cape Croker Reserve had one of the highest voluntary enlistments rates in Canada for World War I. All eligible members – 67 out of a total adult male population of 108 – enlisted. The photo is courtesy of Joseph Borrows, father of Professor John Borrows.

Forced Exclusion, Forced Belonging:

The First Nations of Canada

BY PROFESSOR DARLENE JOHNSTON

The drum sounds, reverberating out from the central cedar-covered arbour around which the veterans will march. The sound echoes back from the limestone bluffs which surround the park, easily within hearing range of the farmhouse where my father was born, here on the Cape Croker Unceded Reserve. It's not a big reserve. In fact, this roughly 16,000 acres on the shores of Georgian Bay is less than one percent of our traditional territory. But it's ours, unceded, never surrendered. It is the one place that my ancestors would not relinquish. It is the place where we belong.

As the veterans march in, they carry flags to post around the arbour: the Canadian flag; the American flag; the United Nations flag; the Red Ensign; and our Reserve's flag. These flags speak to our multiple identities and loyalties. We are united, though, by the strength of our attachment to our land and our relations. Some of our ancestors came from what is now United States. We have familial attachments all around the Great Lakes. Some of our veterans have served in the US Marines. Many others have worn the blue beret of the United Nations. The posting of so many flags might challenge those with a monolithic conception of citizenship.

My heart swells with pride. I am standing at my daughter Sophie's side, as she waits for Grand Entry to begin. This is her fist time dancing in the traditional pow-wow held each summer on our reserve. She wears a jingle-dress made lovingly by Dawnis, one of the first Aboriginal students to have befriended me when I began my teaching career at the University of Toronto. Tingling with excitement, we watch as my father and the other veterans form the honour guard that signals the commencement of Grand Entry. My father comes from a long line of warriors. My Grandfather and his two brothers fought in World War I. The youngest, Uncle Archie, never made it back home from France. My father's oldest brother fought in World War II. Uncle Ross fought in Korea. My father served as a United Nations peace keeper in the Congo and Gaza.

CITIZENSHIP. The very word conjures up notions of freedom and autonomy, the right to participate, a sense of belonging. The Western political tradition regards the transition from subjecthood to citizenship as one of its crowning democratic achievements. The First Peoples of Canada, however, have experienced the paradox of imposed citizenship.

The ubiquitous officious bystander, if asked today whether First Nations people are citizens, would promptly answer "yes, of course". Once pressed for details, such as when and how we came to be citizens, the bystander would be at a loss to answer.

> *The history of the denial and gradual extension of political and legal rights can be cast as a good news story; except that the "happy ending" to a legacy of forced exclusion was likewise non-consensual.*

That's because the political status of First Nations within the Canadian Confederation has never been satisfactorily resolved. It remains an outstanding matter for reconciliation.

The prevailing Canadian mythology portrays a transition First Nations from allies to subjects to wards to citizens. The history of the denial and gradual extension of political and legal rights can be cast as a good news story; except that the "happy ending" to a legacy of forced exclusion was likewise non-consensual. In 1947, when Parliament passed the first *Canadian Citizenship Act*, all persons then residing in Canada, who had been born in Canada, were recognized as "natural-born Canadian citizens". All persons, that is, except for "Indians" as defined under the *Indian Act*. You see, it would have been difficult to include as citizens a class of persons who were specifically excluded from voting in federal elections. A decade later, "Indians" were retroactively deemed to be citizens, albeit in the category reserved for naturalized aliens, that is, "other than natural-born Canadian citizen". Even so, it would not be until 1960, in the wake of the Canadian Bill of Rights being passed, that "Indians" would be able to vote without first having to relinquish their treaty rights and sever their community ties.

ENFRANCHISEMENT: the process of acquiring or being granted the right to vote. Voting rights in Canada historically depended upon gender, ethnicity and property. Women won the right to vote in federal elections in 1920. Race exclusions, which had prevented Chinese, Japanese and South-Asian persons from voting were repealed by Parliament in 1948. In granting the right to vote to these formerly disenfranchised groups, the federal government had not required them to sacrifice any pre-existing rights and relations. Yet, enfranchisement for First Nations had always been a matter of choosing Canadian identity over Aboriginal identity.

In the minds of the colonial politicians, Aboriginal ways of life were deemed "uncivilized" and it was the colonizers' duty to transform "Indians" into Christians and farmers. The first enfranchisement act, dating back to 1859, begins with the following preamble;

> "whereas it is desirable to encourage the progress of Civilization among the Indian Tribes in this Province, and the gradual removal of all legal distinctions between them and Her Majesty's other Canadian subjects, and to facilitate the acquisition of property and of the rights accompanying it, by such Individual Members of the said Tribes as shall be found to desire such encouragement and to have deserved it."

This act was designed to undermine the authority of the tribes and dismantle their reserves. Under section 3, any "Indian" man could be "enfranchised" provided that he could meet certain educational and linguistic requirements (English or French), was of "good moral character", and was free from debt. The result of enfranchisement was that all "enactments mak-

(L-R): Sophie Bender-Johnston, her grandfather Ted Johnston, and her cousin Emily Mansur.

ing any distinction between the legal rights and abilities of the Indians and those of Her Majesty's other subjects, shall cease to apply to any Indian so declared to be enfranchised, who shall no longer be deemed an Indian within the meaning thereof." The act also required that the enfranchised individual "shall cease to have a voice in the proceedings" of his tribe. The legislation contained both proprietary (50 acres of reserve land) and monetary incentives (pay out of share of treaty monies) for enfranchisement. As it turned out, ties to family and territory proved much stronger than these inducements. Only one Indian was actually enfranchised under this legislation before Confederation.

After Confederation, a variety of adjustments were made to the enfranchisement process to make it more palatable. But still it was largely rejected by First Nations. Between 1867 and 1920, only 102 individuals became enfranchised. Why?

Because, at the most basic level, enfranchisement required self-alienation. The power of the Canadian state to determine one's legal and political status had to be accepted. The Creator's gift of identity as an Aboriginal person had to be rejected – cast aside as inferior to that of a British colonial subject. Enfranchisement also involved denial of community autonomy and rejection of the values that community membership represented. It meant standing outside the circle that contained one's ancestors, language, traditions, and spirituality. For what? To escape the humiliating disabilities that the Canadian state had imposed in the first place.

The persistence of communities with separate lands, languages and cultures, came to be seen by government officials as the "Indian problem". In 1920, compulsory enfranchisement was proposed by Duncan Campbell Scott, Superintendent General of Indian Affairs: "I want to get rid of the Indian problem…Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question, and no Indian Department, that is the whole object of this Bill."

The message could not have been plainer. There was simply no place for First Nations in Canada. As soon as Aboriginal children were sufficiently deculturated by the federal Residential School system, they were to be absorbed into Canadian society, by compulsion, if necessary. Forced belonging.

Once the Diefenbaker government granted voting rights to "Indians" in 1960, the enfranchisement process, at least with respect to voting rights, was redundant. However, it continued to operate until 1985, taking status away from women who married non-natives and denying it to the children of those marriages.

» *As soon as Aboriginal children were sufficiently deculturated by the federal Residential School system, they were to be absorbed into Canadian society, by compulsion, if necessary. Forced belonging.*

The granting of federal voting rights did not signal an end to the assimilationist goals of the federal government. In 1969, Prime Minister Trudeau, set out his vision in a "Statement of the Government of Canada on Indian Policy", infamously known as the "White Paper", in which he proposed the abolition of reserves and the termination of treaty rights. In defending the policy from an immediate Aboriginal backlash, Trudeau stated:

> "We can go on treating the Indians as having special status. We can go on adding bricks of discrimination around the ghetto in which they live and at the same time perhaps helping them preserve certain cultural traits and certain ancestral rights. Or we can say you're at a crossroads – the time is now to decide whether the Indians will be a race apart in Canada or whether they will be Canadians of full status. And this is a difficult choice. It must be a very agonizing choice to Indian peoples themselves, because, on the one hand, they realize that if they come into society as total citizens they will be equal under the law but they risk losing certain of their traditions, certain aspects of a culture and perhaps even certain of their basic rights."

Thankfully, Trudeau was persuaded to change his mind. And in 1982, his Patriation Project resulted in the constitutional recognition of Aboriginal and Treaty Rights in Canada.

I squeeze Sophie's hand as her time comes to enter the circle. I feel a sense of pride and thanksgiving. It can't be taken for-granted that our reserve is still here and that there are new generations of children to dance in our pow-wows. Had others had their way, we would have disappeared by now. It is a testament to the resilience of our culture that the drumming and dancing continue. I smile as I watch my daughter dance into the circle, to honour her grandfather and all her relations. ■

CITIZENSHIP BETWEEN

BY PROFESSOR JEAN-FRANÇOIS GAUDREAULT-DESBIENS

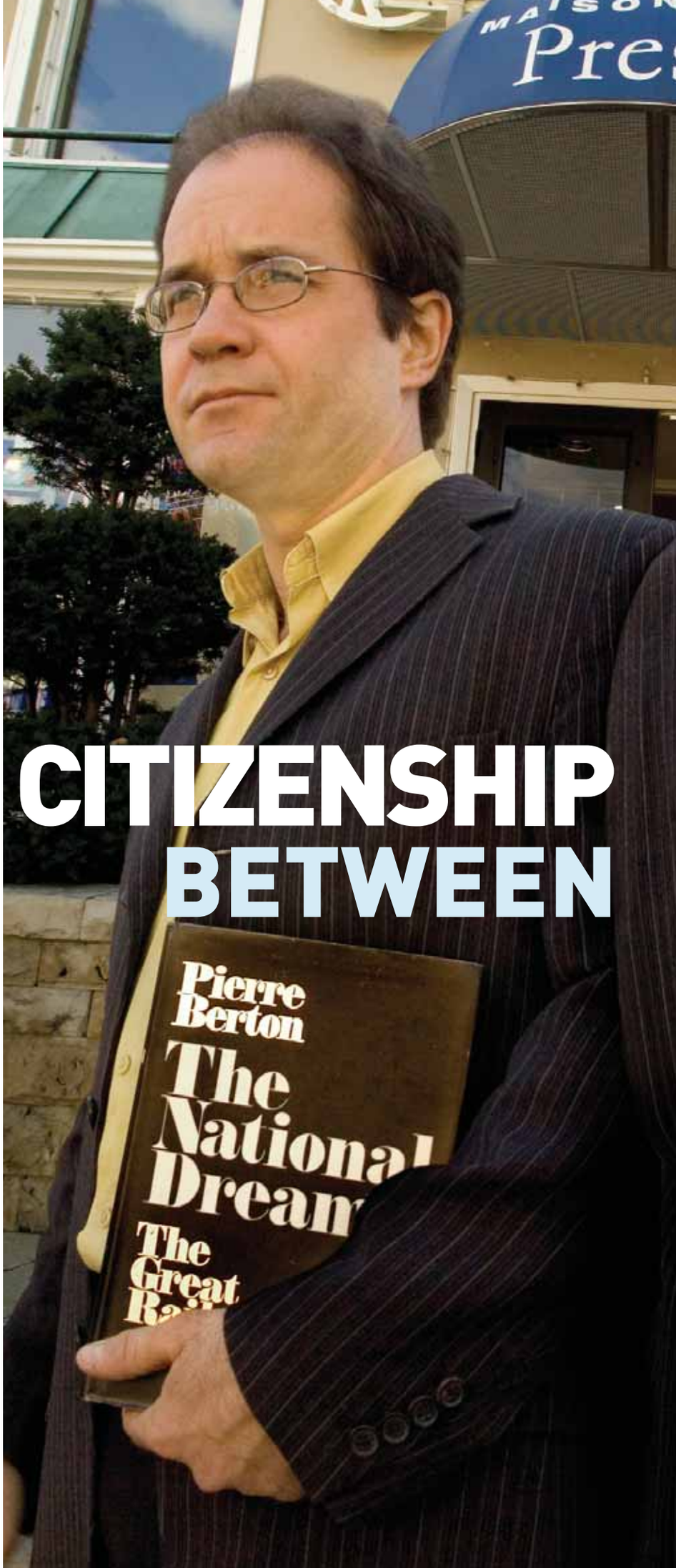
Whenever I read in a Toronto newspaper that a 'Canadian icon' has died, or that such an 'icon' is making a comeback, I get nervous. For I may not know who that 'icon' is, or that he or she is an icon at all.

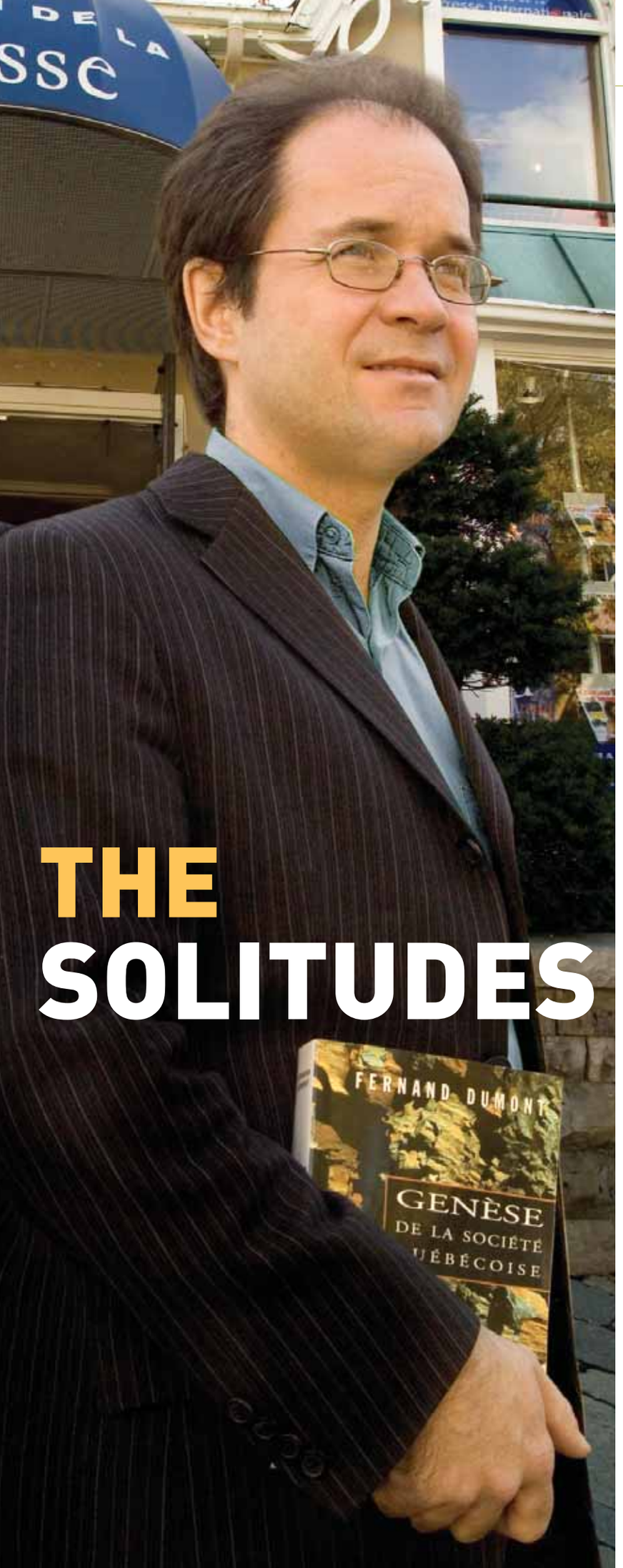
One might assume, that as a Canadian citizen, perhaps these are things I should know. But it is not necessarily the case. Thus, when someone like Pierre Berton, who is said to have told Canadians who *we* are, dies, or when reference is made to Stompin' Tom Connors as *Canada's* bard, I am not sure what to say. For even if Pierre Berton's "*we*", or Stompin' Tom's "*Canada*" do not wilfully exclude me, they certainly do not know me, – and the truth is, I barely know them.

These cultural actors remain foreign to me, even though they come from my own country, and even though I have spent most of my academic career working in English-speaking universities and made significant efforts to understand the psyche of English-speaking Canada.

As anecdotal as they may be, these introductory remarks highlight the resilience of cultural solitudes in Canada (which have an impact on how political membership in this country is conceived of.) A reflection on this theme seems particularly timely given the recent declarations of our newly-appointed Governor General on the need to break Canada's multiple solitudes. Surprisingly, some pundits in English-speaking Canada seem to have understood Madam Michäelle Jean's statement as a kind of regal *fiat* that would magically dissolve the said solitudes. And interestingly, the sub-text of their comments often comes close to saying something like "it is about time that people in Québec (and, why not, Aboriginal peoples) leave aside their long-held grievances against our Canada, and embrace it as we see it."

Suffice it to say, that it is far from clear that the above interpretation of Michaëlle Jean's statement, is correct. A better one, in my view, is that she simply wanted to incite Canadians – *all* Canadians – to question some of their assumptions about who they are, how they view others, and how contested the very concept of Canada is. Her speech was about aspirations. And realizing aspirations requires work and, most importantly, a desire to lucidly identify and examine what may prevent their realization.





THE SOLITUDES

Although the Governor General rightly observed that Canada's sociopolitical landscape is still plagued by the presence of many different solitudes, I will focus here on two of Canada's 'founding solitudes,' the ones that I know best, i.e. the English and the French. In light of their particular impact on the Canada-Québec relation, I will examine how their resilience prevents the flourishing of any truly shared conception of citizenship that would go beyond a mere formal-legal one. I will argue that this is not *per se* a problem, provided that all interested parties acknowledge that Canada's nationhood and identity – and, inevitably, its citizenship – are destined to remain very thinly defined, and provided that the thinness of Canada's identity is offset by a continuing sense of pan-Canadian solidarity.

Let us first talk about the French solitude and how it plays out in Québec. The reference I made to the views expressed by some pundits about the Governor General's 'solitudes' declaration may aptly serve as a springboard for this inquiry. As mentioned, these pundits understood her as enjoining Quebeckers, especially French-speaking ones, to forget their historical grievances and to wholeheartedly embrace the 'new Canada,' this multicultural community of individuals whose *political* identity is primarily, if not exclusively, Canadian. I take it as a given that some of these grievances should be left aside. There are indeed limits to seeing everything through the lens of the 1759 conquest, and to positing oneself as an absolute victim. Fortunately, those who still share such a view are increasingly marginal in Québec, even among sovereigntists. That being said, carefully selective, a-historical, conceptions of Canada, like some that have currency in English-speaking Canada, are no less problematic than mnemonic over-determinations of historical episodes.

Interpretations such as the above seem to assume that there is one overarching cause explaining the resilience of the two solitudes phenomenon, and that this cause somehow lies in a culture of resentment against Canada that would entirely define Québec's political culture. Since French is thriving in this province and since its French-speaking population no longer suffers the rule of 'Anglo bosses', the argument goes, isn't it time to get over that resentment?

Besides comforting an ideology of moral superiority under the guise of an invitation to embrace the 'new Canada,' reducing the problem of the 'two solitudes' to the mere resentment of one toward the other sends a very clear message: "It is you who are prisoners of your own solitude. We are not." By and large, this explanation is incorrect, as it is based on an overly simplistic representation of the state of political thought in Québec and on the obscuring of variables that account for the resilience of the solitudes in question. Arguably, they are as much sociological as they are political, having a lot to do with the language divide, and with the cultural barriers that flow from it, and this, even between societies that have much in common. Thus, if Canada still has to deal with the fabled 'two solitudes,' it is not because Quebeckers resent what other Canadians do or want, or because Canadians outside Québec wish ill to

There is nothing intrinsically illegitimate about English-speaking Canadians' desire to partake in the creation of a 'Canadian nation,' as it is not intrinsically illegitimate for many Quebeckers to see themselves as forming a sub-state nation within Canada. The practical problem, however, is that English-speaking Canada's 'Canadian nationalism' "dares not speak its name."

Quebeckers. It is first and foremost because there is very little communication between these two societies, something that is unlikely to change unless the level of bilingualism drastically rises from coast to coast – a remote prospect to say the least.

While this lack of bilingualism complicates interpersonal relations, it is at the collective level that its effects are more directly felt. In this sense, it would be a mistake to consider language from a merely utilitarian perspective. Language gives human beings access to the world. By providing them with a baggage of cultural references, it contributes to shaping their individual and collective identities. As such, it constitutes discursive spaces that may or may not overlap. Inevitably, having access to one set of cultural references and not to another may impact not only one's political identity, but also one's understanding of the other's conception of his or her own political identity. In the Canadian context, it means not having direct access to this other's dreams and aspirations, or having only an access that is mediated by third parties, for example the media, with all the distortions that such a mediation may give rise to. Coupled with pre-existing conflicts or misunderstandings about the nature and future direction of the political compromise embedded in the country's constitution, this communicational vacuum may prove to be lethal in the long run, even though, I insist, it need not be. When envisaged in light of these everlasting 'two solitudes,' Canada is certainly not a community of communication. Bearing in mind the potential impact of these solitudes on the formation of political identities, this is where their resilience poses a serious problem. Quoting the Attorney General of Saskatchewan, the Supreme Court of Canada stated in the *Québec Secession Reference* that:

> "[a] nation is built when the communities that comprise it make commitments to it, when they forego choices and opportunities on behalf of a nation, ... when the communities that comprise it make compromises, when they offer each other guarantees, when they make transfers and perhaps more pointedly, when they receive from others the benefits of national solidarity. The threads of a thousand acts of accommodation are the fabric of a nation..." [1]

This eloquent declaration does capture what, in essence, a nation is about. But it presupposes one thing, that is, a prior and constantly renewed commitment to that nation, whether expressed through obvious gestures or more tacit ones. In this respect, I am afraid that the societal estrangement that the 'two solitudes' metaphor seeks to capture risks being reinforced by the sociopolitical transformations they underwent in the past thirty years or so. And this may further undermine what remains of the reciprocal commitment of each of these solitudes toward the other, and to the country in general. Put differently, some 'solitude-reinforcing' evolutions could threaten Canadian unity to an extent unseen before. Here, I take unity to refer to "the continuing desire on the part of a population to continue living under the same political institutions, or, perhaps, more precisely, with the *absence* of any desire to sever the existing bonds of political association."[2] More specifically, it designates "a virtue of societies that they be able to undertake the often acrimonious debates and social deliberations which are needed to overcome such crises without putting the "we" in question, that is without abandoning the sense that this is our problem, and that we must thus arrive at a common solution to it."[3]

The problem is that Canada is possibly witnessing the abandonment in both solitudes of this sense that a common solution is needed to reduce the distance between them. Arguably, both in Québec and outside of it, it is the relation to Canada, or to a certain conception of Canada, that has been altered.

While polls consistently show that Quebeckers, even nationalist French-speaking ones, still feel some attachment to Canada, they have paradoxically never been as indifferent to it as they are today. Many of them realize that the conception of Canada to which they are attached is increasingly marginal, or marginalized, outside of their province, and thus find little reason to care about the country anymore. Others worry about the fact that federalism seems to be increasingly perceived by some Canadians as an impediment in a broader nation-building endeavour. Most importantly, an increasing number of them are socialized as if Canada was first and foremost an administrative irritant to get rid of (assuming that they are socialized about Canada in the first place.) This is especially true of young adults. Unlike their parents and grandparents, these individuals may not feel any particular resentment against Canada, but they do not care about it either since they view it as functionally foreign. The impact of this indifference is in my view grossly underestimated outside Québec.

The absence of resentment against Canada in no way guarantees any feeling of allegiance or commitment to the country, or to its current constitutional regime. This is particularly true, again, of the younger generation of Quebeckers. Some mistakenly believe that since a majority of these Quebeckers see themselves as citizens of the world, since an increasing number of them are bilingual if not trilingual, and since they listen to

the music of Arcade Fire, in English, or to that of Bebel Gilberto, in Portuguese, as much as they listen to that of Stefie Shock or Carla Bruni, in French, they will therefore suddenly stop supporting the sovereigntist project and become federalist overnight. Yet there is no rational link between this premise and the conclusion. One can very well be a citizen of the world – for what it means – and share several values with the citizens of other countries or of other provinces, without wishing to form a political community with them, or without feeling particularly concerned by the survival of a political community that already exists. From that vantage point, even if Québec sovereignty is low on their priority list, Canadian unity might be even lower.

While an increasing number of Quebeckers do not even bother to care about Canada anymore, English-speaking Canada's avoidance strategy is slightly different. Although a majority of the people still *claim* to care about Québec, they do nothing tangible to try to understand the vision of Canada that predominates in the province, nor do they do anything to address the concerns that Quebeckers have been voicing to no avail since the 1960s.

This societal silence, which leads to constitutional silence, is largely due to the renovation and intensification of Canadian nationalism in the past twenty years or so. This nationalism now revolves around a Charter-induced patriotism and an adherence to an ideology which defines Canada as a regional, rather than a multinational, federation, and as a multicultural mosaic essentially composed of social, rather than political, minorities, except for Aboriginal peoples. Subject to this caveat, this model values and accepts diversity provided it is neither too deep nor too political. Thus, a minority that conceives of itself first and foremost in political terms and that tends to privilege, as its primordial locus of national and political identification, a sub-state entity, does not fit well in a picture where the primary locus of national identification *should be* with the redefined Canada. I use the words 'should be' because nationalist ideologies are by definition prescriptive when it comes to national identities.

It is important to acknowledge here that this Canadian neo-nationalism is a peculiarly English-speaking Canadian phenomenon.[4] Of course, in the abstract, there is nothing intrinsically illegitimate about English-speaking Canadians' desire to partake in the creation of a 'Canadian nation,' as it is not intrinsically illegitimate for many Quebeckers to see themselves as forming a sub-state nation within Canada. The practical problem, however, is that English-speaking Canada's 'Canadian nationalism' "dares not speak its name".[5] As is often the case with majority nationalisms, it is barely visible. But it is a nationalism nevertheless, and it is premised upon the myth of a re-foundation of Canada after the enactment of the *Canadian Charter of Rights and Freedoms*. Precisely because of the role that the *Charter* plays in it, this myth superficially draws on the ideology of juridical cosmopolitism that informs the theory of 'constitutional patriotism'. In a nutshell, this theory advocates a post-national re-composition of communities that would dissociate the pre-political identities of individuals from their political citizenship, a citizenship that would revolve around a shared adherence to rights, the rule of law, and the democratic principle. Under this view, the diverse practices of citizenship in the public sphere would lead to the emergence of a political identity that is distinct from the citizens' pre-political identities, and even from their pre-existing national identities. This view, which was mainly expounded in the context of European political integration, does not necessarily preclude the recognition of pre-existing political identities, even national ones, but refuses to let them systematically determine the nature of citizenship in the broader polity.[6]

I have said that Canada's post-Charter myth only 'superficially' draws on constitutional patriotism. Indeed, this myth hides, under the guise of constitutional patriotism, a nation-building attempt that essentially speaks to the collective interests and aspirations of one of the two solitudes examined in this article, and that consequently ignores the conception of Canada that has long dominated, and still dominates, in the other. As has been noted, "[i]t is understandable that a multinational ensemble becomes a nation for the citizens who are members of the group forming the majority, but it is not legitimate for this majority to ignore minorities, and this ignorance, which may be linked to a simplistic conception of national unity, risks widening fault-lines and aggravating disputes."[7] In that sense, while constitutional patriotism may lead to reasonably neutral outcomes in the European context, the same is not necessarily true in Canada. This raises doubts as to its applicability to our country,[8] for a post-national project somehow presupposes that all the nations involved dare speak their names.

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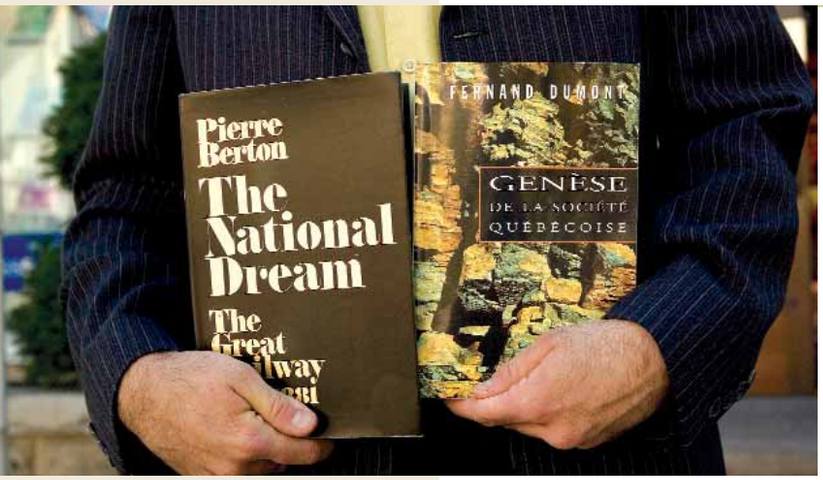
This neo-nationalist indifference to a legitimate vision of Canada carried by a political minority which has significantly contributed to Canada's image of itself, has entrenched the English-speaking Canadian solitude even more deeply than it was before and has comforted many Quebeckers in their disaffection toward Canada. Moreover, it has reinforced a tendency to instrumentalize the federal government in view of advancing the English-speaking Canadian – if not Toronto-centric – conception of the 'Canadian nation,' which, arguably, increasingly reflects a nation-state rather than a federative logic. Québec's emphasis, for better or for worse, on an orthodox federative logic obviously collides with this nation-state logic, and explains why this province is constantly asking for asymmetrical agreements in intergovernmental negotiations. However, if we pluralized the notion of constitutional patriotism and adapted it to the juridical reality of federal constitutions, we could realize that a single constitution may, in a multinational federation, offer several loci of constitutional patriotism. Depending on their conceptions of that federation, some could identify with the rights guarantees, while others would identify with the federal division of powers, even if this locus is possibly less immediately enticing than the other.

This paper has proposed what I believe is a plausible reading of a socio-political dynamic that tends to reinforce, rather than



to break or bridge, the fabled 'two solitudes' of Canada. Unless a major cultural and political transformation occurs, these solitudes are unfortunately here to stay. In contrast with the past, however, the contemporary phenomena explaining the continuing relevance of the metaphor could very well accelerate the erosion of the minimal level of individual and collective trust and commitment that is needed to sustain political membership in a country as complex as Canada.

As I write these lines, it is far from clear whether the majority of citizens in Québec still want to shape Canada's destiny, and whether the majority of Canadians outside Québec are still open to let their fellow citizens from Québec shape it in part. Thus, the best description of Canada that I can imagine is that of a community of comfort held together by a waning sense of solidarity, as evinced by recent debates on fiscal federalism. Paradoxically, all this takes place at a moment where the social values and the political interests of Canadians, whether they are from Québec or from the other provinces, have possibly never been so close. But it is not clear that Canadians realize it, as it is not clear that they realize that Canada's numerous successes are due, in part at least, to the sometimes rocky but highly civil venture that has brought together the two solitudes I have examined in this article. In spite of our constant bickering, we have already done a lot together. Imagine what we could do if we really worked in a lucid and forward-looking way.

So what can be done about this preoccupying situation? I have no magic recipe to propose, since none exists. One path of solution may be to remain modest whenever we elaborate plans to strengthen Canadian identity and nationhood. More specifically, we should avoid all-encompassing foundational myths or identity narratives that are so contentious that implementing them would risk further undermining the commitment of significant segments of the citizenry to Canada. A multinational, highly regionalized federation should not be treated with the same medicine as a nation-state. Political philosopher Daniel Weinstock has recently argued in that regard that "[w]hat is probably required is that the foundational myths of the constituent parts of the federation not be mutually exclusive, that is, they not incorporate the federation partners in terms that these partners reject."[10] This may be not be a very sexy proposition for those whose life project is to become a mother or father of re-confederation, but it strikes me as eminently lucid. If the Canadian constitution is ever substantially reformed, a much-needed but rather unlikely endeavour in the near future, Weinstock's 'optimality rule' should be borne in mind. Indeed, while Canada is often hyped as the world's first postmodern state, it would certainly benefit, in view of achieving a lasting constitutional compromise that would bridge the 'two solitudes' (and, for instance, all the others), from taking a pause and reflecting on the wisdom enshrined in Mies van der Rohe's modernist credo: 'Less is more.'

A last, polemical, suggestion to conclude. Those nationalists who, in both solitudes, do their best to ensure the continuing relevance of the metaphor, notably by grasping political identities through a zero-sum logic, should consider reflecting on their own relation to reality. The existence of some tensions or jurisdictional disputes does not mean that Canada is a failure and certainly does not justify leaving it, especially considering that the values of the Canadian state after World War II have been significantly influenced by the values of Quebeckers themselves. And implementing some form of asymmetrical federalism does not mean that the beneficiaries of such measures are 'more equal' than the others or, worse, that Canada is on the verge of dissolution.

It has been said about European construction that if Europe "cannot be founded on the negation of nations, it is actually founded on the negation of nationalisms."[11] This is to meditate, for although some expressions of nationalism are both legitimate and understandable, to the point of being legally cognizable, nationalist schizophrenia and hypochondria are not. But who am I to say. I, who, when in Montreal, am annoyed by Québec's obsessive and narcissistic nationalism, and who, when in Toronto, am equally annoyed by English-speaking Canada's blind and hegemonic 'Canadian' nationalism? Or maybe it is that acknowledging one's multiple political and cultural identities inevitably leads one to become an annoying contrarian... ■

[1] Reference Re Secession of Quebec, [1998] 2 S.C.R. 217, at par. 96.

[2] D. Weinstock, "Building Trust in Divided Societies", (1999) 7 Journal of Political Philosophy 287, at 289.

[3] Id., at 291-292.

[4] Note here that I refer to 'English-speaking Canada' rather than to 'English Canada', which would rather refer to Canadians of British origin.

[5] P. Resnick, "English Canada: The Nation That Dares Not Speak its Name", in : K. McRoberts, ed., Beyond Quebec: Taking Stock of Canada (Montréal: McGill-Queen's University Press, 1995) at 85.

[6] On this, see, in general, most of the works of Jürgen Habermas published since the early 1990s.

[7] J. Pestieau, "Fragilité du patriotisme constitutionnel", in: M. Seymour, ed., États-nations, multinations et organisations supranationales, (Montréal: Liber, 2002) at 119 (my translation).

[8] See: F. Rocher, "Citoyenneté fonctionnelle et État multinational: pour une critique du jacobinisme juridique et de la quête d'homogénéité", in: M. Coutu, P. Bosset, C. Gendreau & D. Villeneuve, eds., Droits fondamentaux et citoyenneté. Une citoyenneté fragmentée, limitée, illusoire?, (Montréal: Éditions Thémis, 1999), p. 200.

[9] R. Beiner, What's the Matter with Liberalism?, (Berkeley & Los Angeles: University of California Press, 1992) at 105.

[10] D. Weinstock, "The Moral Psychology of Federalism", in: J.-F. Gaudreault-DesBiens & F. Gélinas, eds., Le fédéralisme dans tous ses états. Gouvernance, identité et méthodologie / The States and Moods of Federalism. Governance, Identity and Methodology, (Montréal & Brussels: Éditions Yvon Blais & Bruylant, 2005) at 224.

[11] G. Mairet, "Sur la critique cosmopolitique du droit politique", in: G. Duprat, ed., L'union européenne. Droit, politique, démocratie.

Minority Rights in a Multicultural Society

BY PROFESSOR ANVER EMON

This past summer the Provincial government, having heard vocal opposition to Sharia family law arbitration, banned all religious family law arbitration in Ontario. The decision was met with both criticism and praise, particularly among members of Ontario's Muslim community, who considered the debate to involve crucial questions about the limits and inclusiveness of Canada's multiculturalism. No doubt, the debate will continue to be a hotly contested issue in Ontario and across Canada as Ontarians wait for Attorney General Michael Bryant to suggest amendments to the *Arbitration Act* that will legally ban religious family law arbitration.

Despite the universal ban, the debate was generally framed narrowly around the nature and compatibility of Islamic law with *Charter* values. However, both proponents and opponents of Sharia arbitration relied on a narrow view of Islamic law that interestingly has a recent historical provenance, and which reflects contemporary concerns about political legitimacy and identity rather than legal authority and validity. What the debate on Sharia suggests, in retrospect, is that our understanding of our multicultural spirit will often depend on how we understand, represent, and characterize the Other. The substance and limits of Canada's multiculturalism, therefore, does not simply involve a forceful assertion of what our values are. Rather to understand the meaning of our values and determine our ability to accommodate others will also depend on how we define the Other. The more critical and honest we can be in learning about and understanding the Other, the better we can understand our own values and the limits of our multiculturalism.

Certainly the debate on Sharia forced us to ask ourselves to what extent can Canada's commitment to multiculturalism accommodate minority traditions that are deemed incompatible with cherished *Charter* values? But what does it mean to "deem" a tradition like Islamic law incompatible with *Charter* values? That determination requires a representation of the tradition, its fundamental characteristics, and importantly, its capacity to adapt and change, in this case, to Canadian values and traditions.

The prevailing view about Sharia by both proponents and opponents is one which characterizes it as an ancient religious code – "God's law" – and by implication inflexible and rigid.

» *For adherents of either school, to suggest with any definitiveness that their interpretive product is God's law would be sheer hubris.*

Many people have therefore naturally concluded that one cannot synthesize *Charter* values with a presumably inflexible Islamic law. Perhaps it is not a surprise that the provincial government banned religious family law arbitration given these representations. Arguably it did so primarily based on the representations made about Islamic law.

However, Islamic political and legal history illustrate that to conceptualize Sharia as a code of God's unchanging law is in fact misleading. Certainly it's a religious legal tradition that invokes God for its authority. But to consider its specific rules to be "God's law" is a view with its own political history that does not represent the dynamism of the epistemic framework of Islamic legal analysis. Consequently, an informed decision about the compatibility of a tradition like Islamic law with Canadian values demands at the very least a responsible inquiry into what Sharia is and can be, rather than rhetorical flourishes about the rise of a Canadian Taliban regime.

Representing the Sharia as God's unadulterated law was a rhetorical tool used throughout Islamic history to claim political legitimacy for one group or another. To uphold God's will was to claim authenticity and legitimacy for one's political rule. For political leaders, upholding God's will meant that they must abide by and enforce the Sharia. This kind of legitimacy was a problem for early Muslim rulers, such as the Umayyad dynasty (r. 661-750), which was perceived by many as corrupt, secular, and self-interested. In the late 7th and early 8th centuries, a group of rebels (the *khawarij)* arose who, during much of their existence, opposed the Umayyads on the ground that the ruling caliphs committed grave sins, did not uphold the Sharia, and as such were politically illegitimate. The *khawarij* argued that only those regimes that upheld the rule of God were legitimate. Their rallying cry, *la hukm illa l'llah* (there is no rule except by God), was a political slogan concerning the foundation for political legitimacy – namely upholding God's will through the Sharia. Sharia, in other words, was a cornerstone of political legitimacy for any ruler who claimed authority and legitimacy to rule. To uphold the Sharia was the means by which a *caliph*, *sultan*, or *amir* gained political legitimacy from his subjects.

But what is the Sharia? Historically, political leaders who were charged with enforcing the Sharia were not also considered legal authorities of the Sharia. While the rulers governed and upheld Sharia as the *rule of law*, they did not determine the *rules of law*. They ruled pursuant to a Sharia legal tradition whose content was developed outside the institutions of the government, namely by a juristic class or the *'ulama'*. The jurists were socially embedded within a corporate legal culture characterized by systematic training and certification. Their social and religious authority was based on their graduating from legal training institutions and being licensed to adjudicate and interpret legal sources. The jurists were entrusted to derive specific Sharia rules because it was widely recognized as a social fact that they were the ones with the appropriate skill and training to do so in a way that would not be compromised by the agendas of ruling political elites.

As the juristic class expanded, individual jurists interpreted the law differently. By the 10th century, a culture of legal analysis developed that involved more than reading the Qur'an or the traditions of Muhammad (i.e. *hadith),* but also incorporated an extensive body of literature in which jurists presented conflicting and competing rulings on substantive law *(fiqh),* legal theory *(usul al-fiqh),* and first principles of interpretation *(al-qawa'id al-fiqhiyya).* With a diversity of jurists interpreting the law, and with no central authority enforcing harmony over their findings, the plurality of opinions virtually exploded.

The existence of this plurality led, in turn, to a medieval jurisprudential controversy among the jurists, namely whether every jurist is correct in his interpretation. Fundamentally the debate was about the objectivity and determinacy of the law.

One group argued that not all jurists are correct. Rather, based on a tradition from the Prophet, they said that if one is right he will get two rewards from God in the hereafter, and if he is wrong he will get one reward. The jurist must exert his best interpretive efforts, and no matter what his answer, the jurist will be rewarded for the effort. Implicit in this view, though, is the belief that a right answer actually exists in some metaphysically objective sense. God has specific rules of law *(hukm mu'ayyan)* in mind even though human beings may not be in a sufficient epistemic position to know what the rules are. While this conception of God's law certainly may create an epistemic crisis, jurists of this first group did not charge themselves with making some transcendental leap from the human mind to the divine one.

The second group of jurists argued that God does not have specific rules of law in mind. Rather jurists must engage in the best interpretive efforts possible and arrive at what is for them the right answer. Just as for Ronald Dworkin's "Hercules," the objectivity and authority of the law for this second group lies in the epistemic excellence of the jurist. The authority of any

given rule of law arises out of a process of interpretation in which the jurist, because of his training in the *Qur'an*, hadith, substantive law and legal theory, is deemed to be in the best epistemic position to determine the law.

For both groups a jurist's interpretive product cannot necessarily be God's law. A jurist's interpretive analysis is "right" in the sense that it carries normative authority for him and those who follow his opinions. For adherents of either school, to suggest with any definitiveness that their interpretive product is God's law would be sheer hubris. Rather, the idea that Sharia is God's law is a claim of political authority and legitimacy for adhering to the rule of law. But viewing a specific *rule of law* as "God's law" makes little sense in light of the epistemic frailties inherent in the interpretive process that Muslim jurists acknowledged. Whether interpreting the Qur'an, traditions of the Prophet, or subsequent legal precedent compiled over centuries, a jurist constantly balanced between the authority of textual precedent and the authority invested in him as an adjudicator of the law. The jurist *qua* jurist, socially and professional embedded within the *'ulama'* class, provided a fundamental but necessarily contingent aspect of authority for the rules of law that we now find in medieval law books or *fiqh* whose rules of law were at the centre of controversy in the Sharia debate in Ontario.

Certainly one can read an Islamic law book like the 11th century text *al-Hawi al-Kabir* by the jurist al-Mawardi (d. 1058) and learn how husbands have the unilateral right to divorce their wives (i.e. *talaq)*, but wives do not hold the same entitlement. For al-Mawardi, a woman must go to court to initiate divorce proceedings, while a husband can divorce without court involvement. This rule is found in medieval texts as well as modern handbooks of Islamic law. This is a precedent of long standing that certainly discriminates between men and women. Al-Mawardi derived this rule from a Qur'anic verse stating that if the Prophet divorces his wives, he should do so in a certain procedural manner. But the verse is ambiguous as to whether it explicitly grants a substantive right at all, let alone only to men. To explain the discriminatory effect of this rule, al-Mawardi offered two reasons. First, men must provide for their wife and family, but women do not have the same duty to provide. Consequently, with a difference in duty he justified a difference in rights. But most troubling, al-Mawardi said that women are not in control of their emotions and consequently if they had the *talaq* right they would use it hastily, unlike men who are more rational and circumspect. Certainly al-Mawardi adhered to legal precedent to articulate this rule, while providing his own rationale for the rule. But although stare decisis *(taqlid)* operates in Islamic law to invest a rule with authority, that is not tantamount to calling it true, let alone God's law. Rather any rule of law in Islamic law is the product of an interpretive process subject to epistemic frailties. To presume that deriving a rule of law involves a transparent application of the Qur'an or traditions of the Prophet without some mediating interpretive act is to ignore the history and jurisprudence of Islamic law that testify to an interpretivist ethic within Sharia discourses.

What this suggests is that the debate on Sharia in Ontario relied on a narrow view of Islamic law that historically had more to do with political legitimacy than legal authority and validity. The argument of inflexibility is fundamentally political and not legal. And its political consequences can be extreme. Those opposing Sharia use the conception of legal inflexibility as a reason for marginalizing it and condemning it. Fundamentalists opposed to a perceived hegemony of modern Western values use the rigid conception of Sharia to ensure they have a storehouse of determinate tradition to anchor an "authentic" Islamic political identity.

Despite this rigid view of Sharia in the Muslim world, many Muslim nations have moved beyond this presumed inflexibility to blend Sharia values with modern values in a meaningful synthesis. For instance, many Muslim countries no longer allow a husband to simply divorce his wife by pronouncing a *talaq*. Instead, any valid divorce must be petitioned through the court system. The procedural petition requirement in theory equalizes a man and woman's right to seek a divorce. Furthermore, Tunisia has banned polygamy, despite the Qur'anic and legal precedents allowing Muslim men to marry up to four wives. To justify the ban, Tunisia looked to the Qur'an itself, which states to its male readers: "You will never be able to be just among women even if you tried." Tunisia used this verse to read into the Qur'an a moral trajectory away from polygamy to monogamy as a fundamental Sharia value.

Admittedly, the prevailing view of Sharia as God's law and as inflexible and rigid prevents this sort of accommodating spirit. It is a view that still exists among Muslims in Canada and the world over. To reconceptualize Sharia as interpretive rather than rigid is to open the door to greater possibilities of accommodation and change. The process will unlikely happen overnight. And certainly it will not come from those parts of the Muslim world where governments rely on this rigid perception of Sharia to uphold their own political legitimacy, while censoring alternative views. Rather, a move toward an intepretivist Sharia can only happen in an environment of freedom and openness, not fear and tyranny. Only in an open and egalitarian society like Canada can debate, dialogue, and fearless investigation occur. The debate in Canada, while problematic in some ways, also has provided an initial spring board for this process. And as the debate continues, if the tenor moves from the polemical to the substantive, serious education and scholarship are not far behind. ■

"Five gay men, out to make over the world – one straight guy at a time."

Queer Eye for the Straight Guy

SEXUAL CITIZENSHIP

In her upcoming book, Professor Brenda Cossman explores the contours of the new sexual citizenship. Citizenship, she argues, is about a process of becoming recognized subjects, about the practices of inclusion and membership. But, becoming what exactly? What kinds of citizens are being produced? What are the norms of good and bad citizenship? The following is an excerpt from her new book, which is expected to be published in 2006.

BY PROFESSOR BRENDA COSSMAN

In *Queer Eye for the Straight Guy,* Bravo's hit television show, a team of five gay men undertake an emergency makeover of one heterosexual man. Each week, the Fab Five – self described as "an elite team of gay men dedicated to extolling the simple virtues of style, taste and class" descend upon their subject's home, diagnose his multiple fashion and style infractions, and whisk him off for a day of shopping and self help. Their mission is to "transform a style-deficient and culture deprived straight man from drab to fab". By the end of the day, the straight guy has a whole new look – new clothes, new furniture, new hair products.

The Fab Five are icons of a new sexual citizenship. They are unapologetically gay, and yet they are on the front lines of defending masculinity, heterosexuality and the domestic sphere. They are experts in the art of self conduct. And they shop. Their citizenship is sexualized beyond heterosexuality, commodified through a celebration of market consumption, and domesticated through a new emphasis on the intimate sphere not only as a site for caring for others, but for care of the self. They are citizens who are sexed but not too much; citizens who not only consume but better yet, teach others to do so; citizens devoted to the conduct of self and other improvement. They represent the multiple transformations in the practices of citizenship; that is, the ways in which citizenship is being sexed, privatized and self disciplined.

The gay men of *Queer Eye* present an interesting challenge to much of the sexual citizenship literature which has argued that

Queer Eye for the Straight Guy courtesy of NBC Universal, Inc.

citizenship is heterosexual, and that gay men and lesbians are sexual strangers within the body politic. Quite to the contrary, the Fab Five, like many other gay subjects, are becoming model citizens. But, this new sexual citizenship is about more than the inclusion and assimilation of gay subjects. It is about a makeover in the very terms of citizenship; a makeover that does not merely reverse the traditional heteronormativity of sexual citizenship, but reconstitutes the practices of good citizenship beyond the gay/straight dichotomy. Like the Fab Five, the new sexual citizenship is remodelling heterosexuality as well. They are not alone. From *Sex in the City* to *Oprah*, from the revival of Oscar Wilde to the recuperation of Larry Flynt in the *People versus Larry Flynt*, a new modality of sexual

citizenship is evident, in which practices of belonging for gay and heterosexual subjects alike are being increasingly sexed but not too much, privatized through a celebration of market consumption, and transformed into projects of self governance.

There is no consensus within the citizenship debates on the nature of citizenship. But, at its most general, it invokes the idea of membership. I see citizenship at its most general as invoking a set of rights and practices denoting membership and belonging in a nation state – and including not only legal and political practices, but also cultural practices and representations. Borrowing from the more critical citizenship scholarship, I also see citizenship as invoking the ways that different subjects are constituted as members of a polity, the ways they are, or are not, granted rights, responsibilities and representations within that polity, as well as acknowledgement and inclusion through a multiplicity of legal, political, cultural and social discourses. It is about the way subjects are constituted as citizens and the way citizenship itself is constituted. It is about the discourses and practices of inclusion and exclusion, of belonging and otherness, and the many shades of in between.

SEXING CITIZENSHIP

Much like citizenship more generally, sexual citizenship is a contested concept. Some of the sexual citizenship literature, expanding on the Marshallian tradition, focuses on sexual citizenship as a set of rights to sexual expression and identity. Other scholars focus more broadly on the idea of belonging, on the transformation and privatization of political or democratic engagement, or on a new politics of intimate or everyday life. It is a literature and a concept that cuts across the multiple divisions of the citizenship literature more generally, with differing visions of citizenship as rights, political engagement, normative ideal and/or disciplinary practice.

Two themes run through much of the literature. One is that citizenship has always been sexed, but in very particular ways. Citizenship, with its emphasis on either rights or political participation in the public sphere, has nonetheless presupposed a highly privatized, familialized, and heterosexual sexuality. Citizenship in the public sphere – either in terms of the enjoyment of rights or active political engagement – was predicated on appropriate sexual practices in the private sphere. A second theme that runs through this sexual citizenship literature is the idea that something has changed within the once private sphere of intimate life, metamorphasizing into more expressly public and political concerns. Those who were once excluded – women, gay men and lesbians, amongst others – have demanded inclusion, and have begun to revise and expand the meaning of citizenship by claiming their rights and/or their political participation. In so doing, they have contributed to the politicization of the once private sphere, claiming that issues once relegated to this sphere are themselves the proper subject of political contestation.

Much of the sexual citizenship literature is located within gay and lesbian studies and queer theory and explores the ways in which citizenship has long been constituted through the discourses of heteronormativity. Citizenship, as social membership in a nation state, as a set of rights and responsibilities associated with that membership, and as a set of practices defining membership in the community, has long been associated with heterosexuality: the sexual citizen was a heterosexual citizen. Lesbians and gay men were historically excluded from this citizenship, denied in varying degrees over time civil, political, social and cultural membership. From the criminalization of gay sexuality through sodomy laws to the legal condonation of discrimination, lesbians and gay men have been denied civil citizenship. The non-recognition of same-sex relationships and the refusal to allocate the rights and responsibilities of the welfare state to these couples denied lesbians and gay men social citizenship. The virtual exclusion of lesbians and gay men from the cultural representation in popular culture constituted a denial of cultural citizenship. Heterosexuality constituted a thick border of citizenship.

» CITIZENSHIP, AS SOCIAL MEMBERSHIP IN A NATION STATE, AS A SET OF RIGHTS AND RESPONSIBILITIES ASSOCIATED WITH THAT MEMBERSHIP, AND AS A SET OF PRACTICES DEFINING MEMBERSHIP IN THE COMMUNITY, HAS LONG BEEN ASSOCIATED WITH HETEROSEXUALITY.

The sexual citizenship literature also explores the ways in which these practices of exclusion have been challenged in recent years by lesbian and gay subjects. Gay men and lesbians have sought to be included within the discourses and institutions of civil and social citizenship. Sodomy laws, employment discrimination, and the refusal to recognize same-sex relationships have each been challenged in recent years, with varying degrees of success. Gay and lesbian subjects have also sought a more fulsome cultural citizenship, challenging their invisibility in a broad range of cultural representations. Some scholars have embraced the gay and lesbian claim to citizenship, emphasizing the transformative potential to its insistence on

FROM THE CRIMINALIZATION OF GAY SEXUALITY THROUGH SODOMY LAWS TO THE LEGAL CONDONATION OF DISCRIMINATION, LESBIANS AND GAY MEN HAVE BEEN DENIED CIVIL CITIZENSHIP.

entitlement and inclusion. Other scholars, however, adopt a more critical stance to this claim to citizenship. Some focus on the disciplinary and normalizing nature of inclusion.

Normalization is a strategy for inclusion in the prevailing social norms and institutions of family, gender, work and nation. It is a strategy that neutralizes the significance of sexual difference and sexual identity, 'rendering sexual difference a minor, superficial aspect of a self who in every other way reproduces the ideal of a national citizen'. In the current political climate, this compromise of acceptability 'tends to demand a modality of sexual citizenship that is privatized, deradicalized, de-eroticized and confined in all senses of the word: kept in place, policed, limited.'

Other critics have emphasized the normalizing costs of inclusion in the context of the privatization of citizenship. David Evans, for example, has argued that gay men have been included within consumer citizenship. Gay sexuality is commodified and identity is marketized. This consumer citizenship has been intensified with the rise of the neo-liberal state and its multiple strategies of privatization, in which citizens are being reconstituted in and through the discourse of consumerism. Lauren Berlant has similarly argued that citizenship in the United States has been reprivatized under neo-conservative politics. The sphere of privacy, intimacy and family has become the site of civic virtue. And it is a vision of citizenship obsessed with sex – with normalizing private, procreative, heterosexual sex, and with demonizing all others. Yet others have emphasized that discussions of sexual citizenship that focus on the private, intimate sphere operates to reprivatize sexual citizenship – by reinforcing the idea that sex and sexuality are naturally located with the private, not public spheres. The family and market are reinscribed as the natural sites of sexual citizenship.

Some critical scholars have come to emphasize the ambivalent nature of the claim to sexual citizenship. Carl Stychin for example has argued that citizenship is never wholly disciplined, but may simultaneously retain 'an unruly edge.' There are aspects of the struggle for sexual citizenship, and its rights and responsibilities that are destabilizing. There are also spin off effects of these struggles, such as the awakening of a subaltern queer movement that explicitly resists the politics of assimilation and normalization.

I begin from the premise that sexual citizenship is an ambivalent practice, simultaneously subversive and disciplinary. Moreover, I agree that the interesting questions have shifted; it is no longer productive to debate the normalizing versus transgressive dimensions of a prospective sexual citizenship. Rather, we need to turn our critical attention to the processes of becoming; that is, to what is happening as this citizenship becomes part of the present. Sexual citizenship has begun to transform: heterosexuality no longer operates as a pre-emptive bar to all forms of citizenship. Gay and lesbian subjects have begun to cross the borders of citizenship, unevenly acquiring some of its rights and responsibilities, and performing some of its practices. They are in the process of becoming citizens, a complex and uneven process of crossing borders, reconstituting the terms and subjects of citizenship, as well as the borders themselves.

But, sexual citizenship is about more than the process of gay and lesbian subjects becoming citizens. It is equally about the process of straight subjects becoming and unbecoming citizens. The literature's focus on the heteronormativity of sexual citizenship has limited its analysis of these multiple dimensions. Largely reflecting its location with gay and lesbian/queer studies, this focus on the homo/hetero axis of citizenship tends to neglect the multiple ways in which the hetero side of the equation is subject to extensive regulation.

Sexual citizenship must also be made more explicitly about the multiple processes of becoming and unbecoming citizens for heterosexual subjects as well. In my upcoming book, I push the concept of sexual citizenship further in this direction, exploring some of the ways in which heterosexuality as well as homosexuality is being contested and reconstituted. Sexual citizenship can no longer be approached exclusively through the lens of heteronormativity. Some gay and lesbian subjects are becoming citizens, while others are not. And some straight subjects are unbecoming citizens, while others are not. Sexual citizenship needs to broaden its lens to capture the multiple border crossings of gay and straight subjects alike, and the ways in which these border crossings are reconstituting the borders, the citizens, and the meaning of belonging. ■

the economics of immigration

BY PROFESSOR MICHAEL TREBILCOCK

Current debates and available empirical evidence surrounding the economic impacts of immigration on receiving countries are much more sophisticated than they were even a decade or so ago. While there are many issues that are far from satisfactorily resolved because of the sheer complexity of the causes and effects of immigration, the available empirical economic evidence suggests that immigration has been of net benefit to the vast majority of the residents of destination countries, the only possible losers being native workers with very low skill levels. Indeed, casual observation suggests that massive influxes of immigrants to the "New World" over the past two centuries have been accompanied by massive increases in real per capita incomes – in the case of the U.S., 1600 per cent between 1820 and 1992.

The data are peculiarly at odds with prevailing public attitudes as revealed by various surveys over the past decade regarding the economic desirability of immigration. These surveys generally show that a majority of residents in developed countries would prefer that current immigration levels be reduced or, at the very most maintained, but certainly not increased. The survey results reflect fears that increased numbers of immigrants will, *inter alia*, increase unemployment, displace native workers, lower wages, increase the fiscal burden borne by natives, and increase the crime rate. I focus here on labour market effects and fiscal effects of immigration.

I) LABOUR MARKET EFFECTS OF IMMIGRATION

Recent studies of the effects of immigration on labour markets have generally demonstrated that increased numbers of immigrants have played little observable role in reducing wages or in increasing unemployment. Noel Gaston and Douglas Nelson have remarked that "the uniformity with which the authors of [empirical work in labour economics] conclude that there is essentially no consistent evidence of labour market effects from immigration is truly striking."

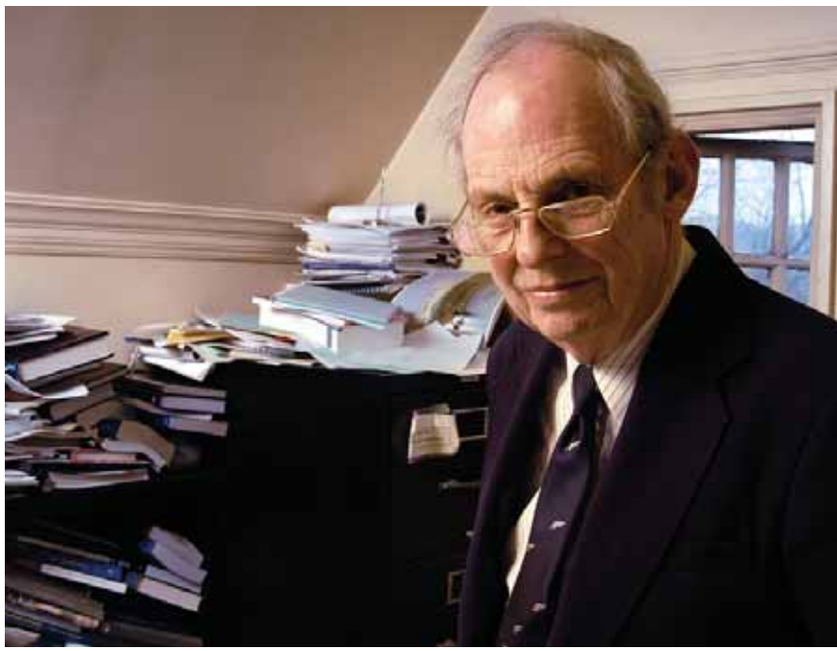
After a thorough review of the empirical evidence in the literature, a National Academy of Sciences study in 1997 concluded that "the weight of the empirical evidence suggests that the impact of immigration on the wages of competing native workers is small." These findings are at first sight puzzling given the accepted labour economics account of the expected effects of greater labour market competition. The conventional analysis suggests that by increasing the supply of labour, *ceteris paribus*, wages will decrease among similarly endowed and situated workers. The *ceteris paribus* proviso is an important one. It requires immigrants to increase the supply of labour in domestic labour markets without contemporaneously increasing the demand for labour. However, an offsetting increase in the demand for labour is in fact quite plausible, since immigrants are consumers of goods and services, and the increased demand for and provision of goods and services inevitably associated with their presence ought to result in a corresponding increase in labour demand by domestic suppliers of goods and services.

An important normative caveat needs to be noted to the current state of empirical research on the effects of immigrants on receiving countries' labour markets. Even if it proved to be the case that immigration (perhaps at higher than current levels) depressed wages or raised unemployment amongst native workers, it is still not clear that the net domestic welfare effects would be negative. After all, international trade often has similar effects but we generally conclude that liberalized trade increases total welfare on net in importing countries (especially consumer welfare). Similarly, liberalized immigration may at some point have similar effects. Indeed, if immigrants are generally more productive in receiving than sending countries (perhaps because of poor institutions and infrastructure in the latter), these effects could be more pronounced than if they stayed at home and provided goods and services for export into developed countries' goods and services markets. On the other hand, as pointed out above, in the case of immigration, immigrants are likely to increase demand for locally produced goods and services that are typically not traded internationally. As well, an increase in the supply of labour is likely to change the output of receiving countries' economies. In any event, it is far from clear why we should regard adverse effects on receiving countries' labour markets negatively in the case of immigration, but positively on net in the case of international trade from either efficiency or distributional perspectives.

» *A MAJORITY OF RESIDENTS IN DEVELOPED COUNTRIES WOULD PREFER THAT CURRENT IMMIGRATION LEVELS BE REDUCED OR, AT THE VERY MOST MAINTAINED, BUT CERTAINLY NOT INCREASED.*

II) FISCAL EFFECTS OF IMMIGRATION

The other most common economic fear harboured by many members of the public with respect to increased immigration is that immigrants impose a collective cost upon the public sector's finances by burdening the welfare state with disproportionate claims for, *inter alia*, welfare payments, food stamps, public housing, subsidized public education, publicly provided or subsidized healthcare, and public pensions. Fears of this nature are most likely to be warranted when borders are open and when immigrants are entitled to participate in the programs of the welfare state immediately upon their arrival or after only a brief period of residency (a form of adverse selection problem). When borders are open immigrants cannot be means-tested to ensure that they have the resources or opportunities to provide for themselves economically after landing.



The most sophisticated study available on the fiscal impacts of immigration in the U.S., recently produced by the National Research Council (NRC), suggests that each immigrant and their descendents will on average generate a net fiscal benefit of $80,000 for natives of the U.S. in net present value terms in 1996 dollars. Highly skilled immigrants and their descendants generate a greater fiscal surplus ($198,000 each) than do lower skilled immigrants ($51,000 each), while immigrants with less than high school education generate a negative long-term fiscal impact of $13,000. Overall, the NRC estimates a significant positive gain of up to $14 billion per year to native Americans.

The Economic Council of Canada ventures an estimate of the benefits to Canadians of an increase in yearly per capita income of approximately 0.3 percent for every one million immigrants admitted to the country. Given that there are approximately about five million immigrants currently living in Canada, the implication of this estimate is that annual per capita GDP is 1.5 percent higher in Canada than it would be if the country had pursued a policy of closed borders for the past several decades. This currently translates into a benefit of approximately 349.50 dollars per Canadian per year. Discounting this annual benefit at eight percent per annum, the net present value of Canada's immigrant population to Canadian natives amounts to approximately 4,368 dollars each.

While Canada, amongst developed countries, has one of the most liberal immigration policies, the admissions process is still excessively bureaucratic, cumbersome, and protracted. In the increasingly fierce international competition for talent in many sectors, there are large potential first-mover advantages likely to be realized through a more nimble, decentralized and flexible set of immigration policies. To this end, I propose that those who wish to immigrate, who have already secured employment or family sponsorship, or who have financial resources sufficient to maintain independence from the amenities of the welfare state (except publicly subsidized education and universally accessible health care), would be able to immigrate freely (subject to clearing health, criminality, and national security checks) provided that they, either individually or through their employer or family sponsor, have taken out specified minimum-coverage private insurance, or a bond, to cover any drawings that they may make against non-contributory social programs during the period until naturalization (analogous to mandatory third-party liability automobile insurance). This private insurance requirement responds to the need to screen out fiscally induced immigration by internalizing a significant portion of the social cost of immigration to would-be immigrants or their sponsors and in competitive private insurance markets would presumably be priced so as to reflect relative risks. I have also proposed the liberal distribution of temporary work visas to employer-sponsored immigrants. This liberal temporary worker system would be accompanied by automatic graduation to permanent legal immigrant status after a specified period of continuous employment in the host country, e.g., three to five years. During the period of residence as a temporary worker, the only social services available would be publicly subsidized education and universally accessible health care. Upon the automatic grant of permanent residence status, the temporary worker would qualify for full participation in all social programs and would begin the period of residency necessary to naturalize as a citizen and secure the rights associated with full political participation. ■

» While Canada, amongst developed countries, has one of the most liberal immigration policies, the admissions process is still excessively bureaucratic, cumbersome, and protracted.

The Global Race for Talent

"We have to start thinking about the Immigration Department as a recruiting vehicle for Canada's demographic and labour market needs … we are the lungs of the country."

Immigration Minister Joe Volpe,
Interview with the *Globe and Mail*, Oct. 31, 2005

BY PROFESSOR AYELET SHACHAR

Between 1901 and 1991, the most coveted honor in scientific research, the *Nobel Prize,* was awarded to one hundred researchers in the United States. Less well-known is the fact that almost half of these Nobel Prizes were won by foreign-born researchers (think of Albert Einstein, perhaps the world's most familiar knowledge migrant) or by their children. America has traditionally enjoyed the lion's share of international knowledge migration.

But this trend has changed dramatically in recent years. The United States is no longer the sole – nor the most sophisticated – national player engaged in this global race for talent. Over the past few decades, other attractive immigration destinations such as Canada and Australia have created selective immigration programs designed to attract the "best and the brightest" worldwide. More recently, France, Germany, Ireland, the Netherlands, the United Kingdom, and other European Union nations have introduced fast-track admission processes for highly skilled professionals, especially those working in information technology (IT).

Recent OECD reports confirm that these selective immigration policies are bearing fruit. Those countries that have adopted them have seen a significant increase in their recruitment of highly skilled migrants. And while the United States has traditionally been the "IQ magnet" for talented foreign students, its dominance in this area is waning. Between 2001 and 2003, for example, the inflow of foreign students to top universities and research institutes increased by more than 36 percent in the United Kingdom, 30 percent in France, and 13 percent in Australia. During the same period, inflows of foreign students declined steeply in the United States, dropping by 26 percent.

In a recent article in the *New York University Law Review*, I show that national immigration policymakers increasingly operate under the assumption that unless their governments proactively "match" the offers of admission and settlement extended to the "best and the brightest" by other nations, their country will lose out in the global race for talent. Under such conditions, rational immigration policymakers must take into account the selective migration initiatives adopted by their competitors in designing their own initiatives to attract world-class talent. The crucial point about state action here is that it takes place in the context of a competitive scramble *among* jurisdictions, where each talent-recruiting country is influenced by the immigration initiatives adopted by its main rivals. This competitive rationale, which has been neither identified nor explained by prevalent accounts of immigration, is at the core of the new global race for talent.

To address this gap in the literature, I have developed a new analytical framework for understanding the rise of an inter-jurisdictional competition for talent. Whereas standard accounts of immigration policymaking focus on domestic politics and global economic pressures, my analysis highlights the significance of inter-jurisdictional interaction. This new perspective explains how and why immigration policymakers in leading destination countries try to emulate – or if possible exceed – the skilled-stream recruitment efforts of their international counterparts. Challenging the prevalent view that economic globalization will lead to the demise of state control over immigration, the recent changes illuminated here reveal a more nuanced picture: immigrant-destination countries are actively engaged in a multilevel game, whereby the interaction between competing states influences national immigration policy setting.

Arguably, adopting a "targeted" immigration strategy is valuable in its own right: it allows each destination country to capture the net positive effects of knowledge migrants' enhanced skills and innovation capacity. However, once the race for talent has begun, there is significant pressure to engage in targeted recruitment: no country wants to be left behind. As a result, a nation's immigration policy can no longer be understood as being insulated from, or oblivious to, the actions of other countries. When it comes to luring the highly skilled, modern states, as Justice LaForest remarked memorably in *Morgaurd*, "cannot live in splendid isolation." Rather, each state must take into account the selective migration initiatives of other countries. Immigration policy has thus become a multilevel and international game.

Canada was the first country in the world to introduce the "point system," a novel and influential admission criteria.

As I was conducting the research for this project, I found myself repeatedly puzzled at the untold tale of Canada's importance as a policy innovator in the field of skilled migration. To address this issue, we need to review the major turning points in the development of selective admission programs in advanced industrial countries. While the United States took the initial move in opening its doors to skilled migrants in 1965 with the famous amendments of the *Immigration and Nationality Act*, Canada was the first country in the world to introduce the "point system," a novel and influential admission criteria. Since its introduction in 1967, the Canadian point system has become a model for similar programs imitated by immigration policymakers in destination countries. In 1973 – in a classic example of trans-jurisdictional borrowing – Australia's immigration services introduced a new selection system for skilled migrants, which was formalized six years later into a full blown point system along the lines of Canada's skilled-migration selection system. In 1991, learning from the experiences of Canada and Australia, New Zealand joined the race for talent, developing its own variant of the point system. Over the last decade, this race has expanded to include most of the countries of the European Union, which now aggressively recruit talented foreign students and highly skilled workers from outside Europe. In 2000, for example, European leaders reached agreement on the Lisbon Agenda, committing their nations and the EU as a whole to the goal of becoming "the most competitive and dynamic knowledge-based economy in the world" by 2010. This has led to the introduction of specialized fast-track entry streams for knowledge migrants in almost every country in the EU. The most dramatic move occurred in Germany, which has long had an official recruitment ban on labor migration, but in 2000 began recruiting IT specialists. Now Germany specifically targets the "best brains" in science, research, and top management. In 2002, the UK followed suit. It adopted an elaborate point system, drawing again upon the original "made in Canada" model.

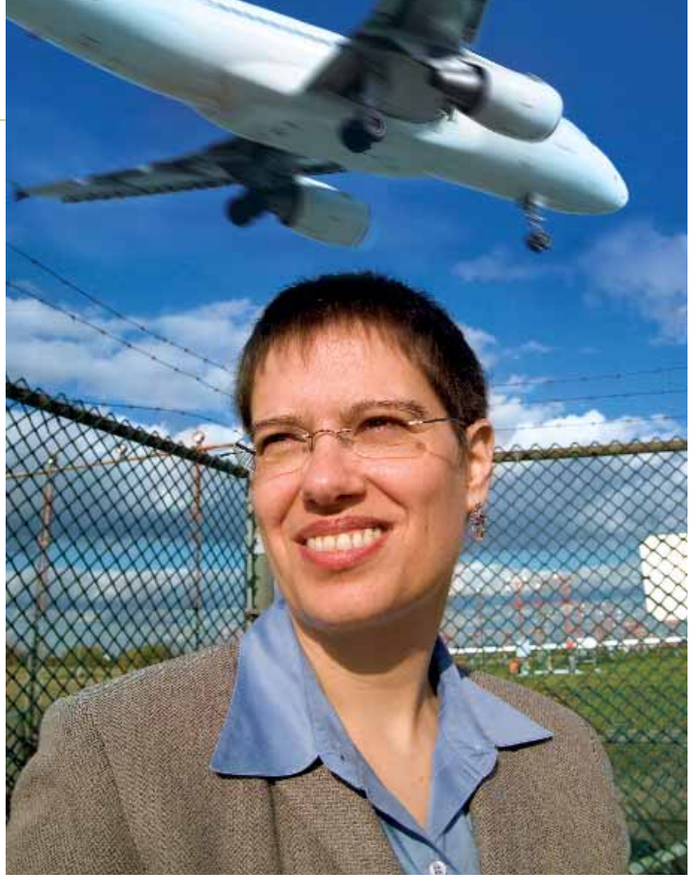
This pattern of policy emulation offers an example of how immigration officials are constantly trying to outbid their international rivals. This transnational "borrowing" is not informed by an attempt to reach harmonization of admission standards. Rather, it exemplifies non-cooperative action taken by fiercely competitive jurisdictions. The behavior reflects a strong commitment to making adjustments and refinements to existing admission policies in order to ensure that other international competitors do not get ahead without an appropriate response. This bullish tone is well captured in remarks recently made by the Immigration Minister after introducing new measures to fast-track the admission of 100,000 skilled migrants: "Canada's immigration system is a model for the world and today's measures allow us to maintain and enhance our position."[1]

This new openness towards skilled migrants in many parts of the world stands in sharp contrast with the stricter post-9/11 entry regulations and cumbersome security-motivated tracking systems (such as SEVIS) now imposed by the United States upon foreign students, researchers, and other skilled workers. This is an unprecedented moment in the modern history of

skilled migration: whereas America is imposing mounting restrictions and enforcing cumbersome and unwelcoming procedures for foreign students and skilled workers' visa applications, its major competitors are crafting new immigration policies that specifically target these very same populations, providing them with incentives to remain. Rather than maintain its competitive advantage in attracting skilled workers, America has undermined its own incredibly successful and longstanding strategy of recruiting world-class talent. This is a risky move. When faced with these competing alternatives, it is only rational for skilled migrants with abundant *human* capital – people with dreams and hopes and proven adaptability to new challenges – to redirect their international movement.

Moving from a positive account to a normative one, the rise of the race for talent raises significant ethical questions about the relationship between citizenship and justice, as well as mobility and distribution, on a global scale. The increased mobility of the highly skilled across national borderlines accentuates patterns of inequality in the distribution of opportunities and benefits according to the abundance of human capital. As we have seen, the race for talent provides great opportunities for a certain new brand of migrant – the globe-trotting, college-educated, knowledge professional with marketable skills – but it increasingly forecloses admission for those who cannot demonstrate these qualities. Moreover, the race for talent rests on an overly narrow definition of "talent" as correlating with economic efficiency and quantifiable results, while downplaying virtues such as civic participation and public spiritedness, which are part and parcel of what makes a great society. It is also disturbing to witness the eagerness with which governments engage in the business of "managed" migration. In the short term, the process puts the state at the centre of regulating the polity's membership boundaries. In the long run, however, these processes may infect with market-based values the state's role in fairly and equally distributing the entitlement of citizenship – a responsibility that would be deeply deformed if it were reduced to mere economic or efficiency considerations.

While we cannot read the tea leaves of skilled migration, we can safely conclude that the new political economy of immigration favors those who can take advantage of the panoply of choices. For those with the right skills set, investment in higher education in their home country or abroad can lead to exponential returns, if they take advantage of burgeoning opportunities to secure employment and citizenship in a stable and affluent democracy. This is both encouraging and disheartening. It is encouraging for the individual skilled migrant who, by no choice or fault of her own, was born on the "wrong" side of the border of wealth and freedom. The current global race for talent greatly enhances her chances of pulling herself up through hard work and responsiveness to the global demand for refined skills and raw talent. But it is far less rosy a picture for those who do not fit the economic-efficiency definition of "talent."[2] Furthermore, from a global justice perspective, it seems problematic to permit the wealthier countries to use their economic and citizenship rewards as a way to further advance their relative advantage by drawing in the talent and



energy from poorer regions of the world. Even the World Bank, surely less a bastion of redistribution than of free-market economy, has weighed in on the debate over the accelerated recruitment of skilled migrants to the OECD area from the rest of the world, trying to establish credible numbers about the scope and depth of the effects of the recent surge in cross-border human capital flows.[3]

In the World Bank's data on skilled migration, the pessimist sees a "brain drain," whereas the optimist sees a pattern of "brain circulation" between rich and poor countries, developed and developing nations, emigrant and immigration societies. The jury is still out on the results of these empirical studies, but it is not too early to act. As we have seen, Canada played a key role in initiating the rise of the current race for talent. This country relies upon and enjoys the fruits of the hard work, investment, and creativity of its skilled migrants, even though it often imposes many unnecessary burdens upon arrival, including the lack of appropriate accreditation of foreign credentials.[4] But the types of problems I have in mind go beyond these domestic concerns. If the race is here to stay – as appears to be the case at least for the foreseeable future – we need to expand our horizons and examine the impact of competitive immigration regimes not only on receiving countries and their dynamic policy interactions, but also on emigrant-sending countries.[5]

In its most far-reaching implication, the analysis of the race for talent sketched here can encourage a constructive discussion on how to envision a more equitable distribution of the wealth and opportunity generated by knowledge migrants *across* the multiple membership communities to which they belong. The ethical concern, in short, lies not with the rise of a global race for talent, but with the unequal distribution of the spoils. ■

[1] Citizenship and Immigration Canada, News Release, "An Immigration System for the 21st Century," April 18, 2005.

[2] See Don Flynn, "New Borders, New Management: The Dilemmas of Modern Immigration Policies," Ethnic and Racial Studies 28 (2005): 463-490.

[3] See e.g., Frédéric Docquier and Hillel Rapoport. "Skilled Migration: The Perspective of Developing Countries" World Bank Research Working Series No. 3382 (2004).

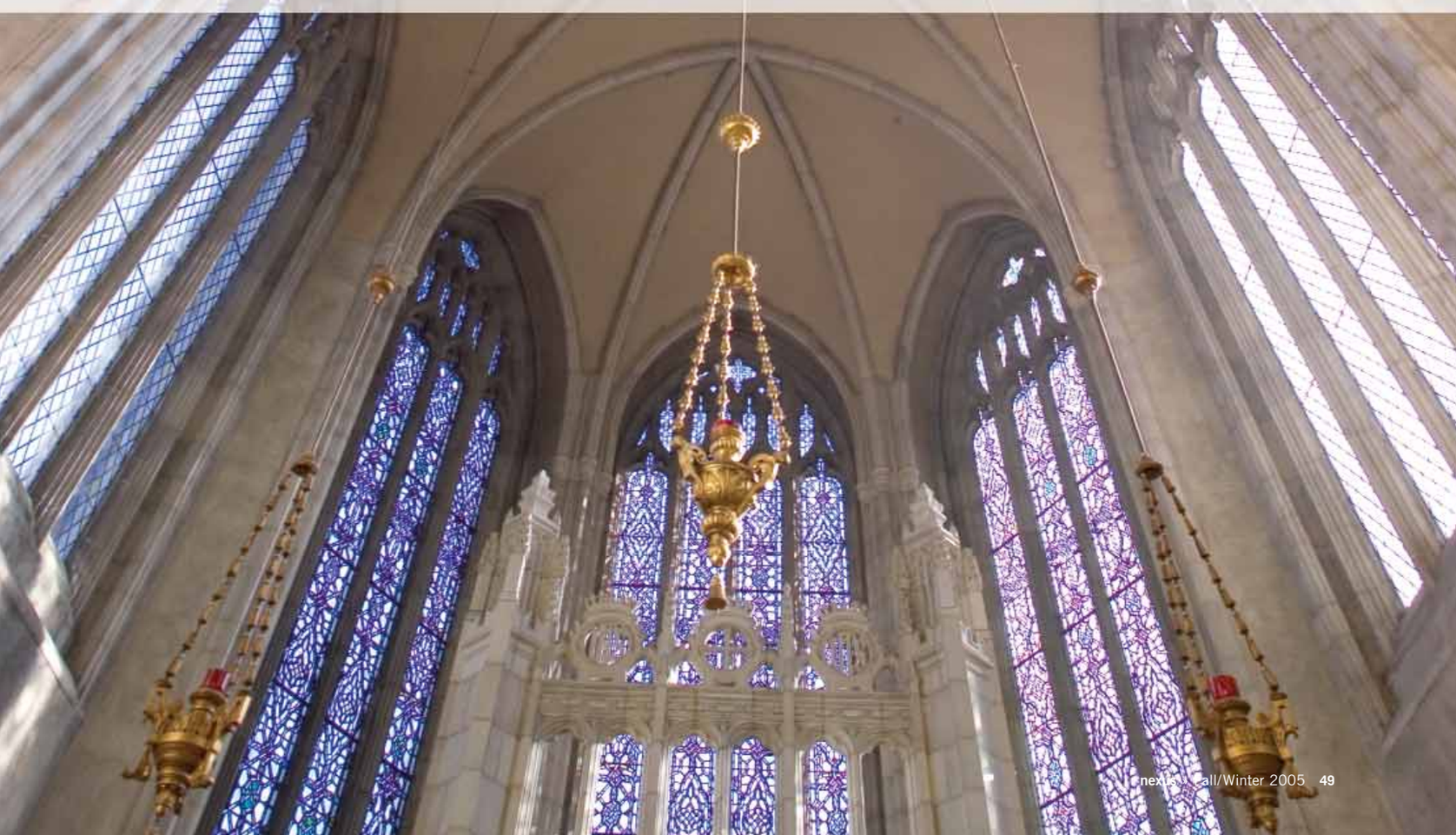
[4] See Jeffrey G. Reitz, "Tapping Immigrants' Skills: New Directions for Canadian Immigration Policy in the Knowledge Economy," IRPP Choices (2005).

[5] For promising work in this vein, see e.g. Dhananjayan Sriskandarajah, "Migration and Development: A New Research and Policy Agenda," World Economics 6 (2005): 141-146

The following is a revised and updated version of a speech given by Professor Audrey Macklin at the annual Craddock Lecture, sponsored by the Bloor Street United Church. Over the course of the lecture series' thirty year history, invitees have included the authors Margaret Laurence and Michael Ignatieff. In her text, Professor Macklin discusses the controversial practice of "Church Sanctuary" for refugees, its history of quiet tolerance by the State, and recent events that have brought to the fore its continued viability as an act of civil disobedience.

COMING BETWEEN LAW AND THE STATE: CHURCH SANCTUARY FOR NON-CITIZENS

BY PROFESSOR AUDREY MACKLIN



I wish to speak today about the practice by some churches of granting sanctuary to failed refugee claimants and other non-citizens under threat of deportation from Canada. I would not presume to lecture a church congregation on the historical or doctrinal aspects of this ancient and noble religious tradition, nor will I quote you Biblical injunctions about our duty toward the stranger. Instead, I will focus on the political and legal facets of sanctuary as it is practiced today by various Canadian churches. According to international law, a refugee is a person who is outside her country of nationality and is unable or unwilling to return owing to a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion. By ratifying the 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol, Canada pledged not to *refoule* (return) a refugee to the country where she fears persecution, and this duty is incorporated into Canada's Immigration and Refugee Protection Act (IRPA). Most people granted sanctuary by churches are unsuccessful refugee claimants. Others are non-status migrants, a category that includes people who entered without a visa, overstayed their visa, worked without a permit, or worked outside of the terms of their permit. Such individuals are frequently labeled 'illegals', a term whose casual brutality implies the assignment of illegality to the very condition of being human.

Sanctuary cases surface in the press intermittently, but sanctuary garnered sustained attention when the former Citizenship and Immigration Minister Judy Sgro called on church leaders to stop engaging in the practice. Why the demand? Because sanctuary has been remarkably successful in thwarting deportations. With one notable exception, the government has never violated the sanctuary of the church. Instead, Citizenship and Immigration Canada has almost invariably agreed to exercise its discretionary authority to allow the person concerned to remain in Canada and obtain permanent resident status. This dispensation is always granted on terms that never, ever concede that the initial decision was wrong.

There is nothing in law to prevent immigration enforcement officers from obtaining a warrant to seize a person from a church. Moreover, anyone who aids or abets a person in violating the Immigration and Refugee Protection Act, or obstructs an officer in the performance of his or her duties may be liable to prosecution and penalties ranging from fines to imprisonment. Up until Spring 2004, when Algerian refugee claimant Mohamed Cherfi was seized from a Quebec City church, the state had never breached the sanctuary of a church, or charged a congregant with aiding or abetting the commission of an offence under IRPA.

This is a remarkable record of success for a practice that represents an ongoing exercise in civil disobedience. Although the impact of sanctuary as measured in numbers is tiny, its symbolic significance as a challenge to state authority matters enormously. The fact that the state has chosen not to exercise its legal authority to break down church doors does not mean that it lacks that power. So the interesting question is not 'why did the state breach the sanctuary of the church in Quebec City?' but rather 'why have they refrained before and since?'

Let me begin by suggesting that the churches involved in the sanctuary movement and the state speak to one another in different languages: the state speaks the language of law. More specifically, it operates within a particular positivist conception of democratically legitimated authority. It says, in effect, we were elected to govern, and that includes making and implementing laws that go to the very essence of sovereignty: who may enter, who may remain, and who shall be excluded or expelled. It is our job, and we do it subject to the legal constraints of our constitution and our international legal obligations. The courts will tell us if and when we misconstrue the limits of our power. You, churches, are unelected and have no authority to make decisions on behalf of the rest of Canada about these matters.

The churches, as I see it, speak the language of justice. It may be that many in the faith community trace their conception of justice to a divine source, but in the public sphere church leaders consistently frame their position in terms that appeal equally to secular values. That is to say, churches do not defend sanctuary by claiming that divine law commands them to provide sanctuary, and that this sacred ordinance trumps domestic law. Instead, the churches argue that Canada fails to honour its international obligations and even its own domestic undertakings with respect to the refugee determination process. In other words, Canada is behaving unjustly even within the limited terms it sets for itself.

In advancing this argument, churches usually cite two major flaws in Canada's refugee determination system. First, they argue that the role played by patronage in the selection process for appointing first-level decision-makers results in a higher level of incompetence and bad faith among Members of the Immigration and Refugee Board (IRB) than it would obtain under a purely merit-based system. This problem has been exacerbated since IRPA reduced the number of Members hearing a case from two to one. The second problem is the lack of an appeal on the merits from this first-level decision. The only recourse from a negative decision is judicial review before the Federal Court on limited grounds. The Federal Court grants leave to seek judicial review in a tiny fraction of all applications. As a matter of legislative history, the two shortcomings are inter-related. When the government proposed to conduct hearings before a single Member instead of two, refugee advocates expressed concern about the potentially negative impact on the quality of decision-making. The government responded by introducing the Refugee Appeal Division (RAD) as an administrative appellate body that would conduct appeals on the merits from initial decisions. Indeed, the Immigration and Refugee Protection Act devotes several sections to the institutional framework and jurisdiction of this Refugee Appeal Division (RAD). But almost four years after IRPA became law, RAD provisions had yet to be declared in force. Recently, the Hon. Joe Volpe, current Minister of Citizenship and Immigration, finally declared what many suspected — the government does not intend to implement RAD now or in the future.

Given this context, the churches (and other critics of the system) argue that the exercise of state power over refugee claimants lacks legitimacy. The failure of the government to live up to its own promises and obligations enables those who provide sanctuary to defuse objections that churches elevate particularistic spiritual duties above the universal obligation to obey the ordinary law. And while the churches lack the legal authority to affirmatively grant refugee status, they can intercede by placing a wall (literally) between the individual and the state in the hopes of preventing the commission of a further injustice through deportation.

Churches are not the only social institutions who speak of justice, or who confront government for its excesses and failures. But Christian churches – especially at the level of individual congregations – enjoy a privileged status in Canadian society, in large measure due to their integrity, ethical commitment and motives. One of the most striking features of the sanctuary movement in Canada has been the avowedly public nature of its performance. Far from striving to evade detection (which has been a feature of sanctuary practice at different times and in different places) churches deliberately publicize their decisions to grant sanctuary. In effect, the churches throw the weight of their reputation as moral actors in society behind individuals who have no standing. And this is the real barrier that stands between the state and the person living under the threat of deportation. Up until April 2004, the government was unwilling to pay the political price of confronting the churches, even if it meant compromising its own authority. I cannot emphasize enough to you how remarkable a phenomenon this is: Non-citizens in general, including refugee claimants, are among the most powerless and vulnerable of people. In the political marketplace, they hold no currency: they can't vote and many lack sufficient command of English or French to speak on their own behalf in the public domain. In the climate of insecurity post-September 11, they are increasingly viewed with suspicion. Non-citizens carry little or no political weight. And yet, the intercession of churches and the institution of sanctuary not only evens the scales, it tips the balance in favour of life in Canada, and away from persecution or death in another country.

So when a church provides sanctuary to a failed refugee claimant, or to some other non-citizen facing deportation, it is spending from its reserve of moral capital on behalf of someone who has no capital at all. And while I commend the practice of sanctuary, I also wish to broach it as an exercise of power in order to orient us toward questions of accountability.

It is important to disclose that I was once a Member of the Immigration and Refugee Board, and it was my job to determine refugee status day and day out. Now I don't think that any of the claimants I turned down ultimately sought sanctuary, but they might have. On a personal level, I imagine that I might have felt a certain affront had a church congregation decided that it was better qualified than me to discern whether a claimant I rejected actually met the refugee definition. Were the members of the congregation trained in refugee law? Did they hear evidence under oath, examine documents, bring experience hearing scores of similar claims to bear on their assessment? What entitled a group of church congregants to believe they were more entitled or more qualified than me to determine refugee?

Justifying sanctuary as a response to existing defects in the refugee determination system may be tactically wise, but it is ultimately unpersuasive in its modesty.

The truth is that as long as judgment is a human (rather than divine) endeavour, it will always be fallible. Even the best, most qualified, well-meaning and competent decision-makers may come to wrong decisions. And that applies equally to members of the Immigration and Refugee Board and to members of a church's sanctuary committee. The unsettling truth is that in the overwhelming majority of cases, one will never know if a decision was right or wrong. Refugee determination transpires under conditions of radical uncertainty.

At least two implications flow from these observations: First, even if the appointment process was improved and the appeal process was implemented, the demand for sanctuary would not evaporate because mistakes would still occur. Justifying sanctuary as a response to existing defects in the refugee determination system may be tactically wise, but it is ultimately unpersuasive in its modesty. Secondly, the irremediable fact that human judgment is accompanied by human error calls for a certain humility on the part of all those who purport to judge – including groups that provide sanctuary. Presumably, churches do not extend sanctuary to everyone who asks, and perhaps there are cases where they are wrong to refuse. I venture to suppose that there is no appeal from a denial of sanctuary. The most one can say is that there is inherent merit in having more than one person making a final decision, which is how the present law operates, and that it is preferable to err on the side of inclusion rather than exclusion, at least in the overwhelming majority of cases where no security issues arise.

In closing, let me offer a slightly different – and slightly more subversive – optic through which to view sanctuary. In my past life as a Member of the Immigration and Refugee Board, I was required to judge within a few short hours whether I could configure the life experience, motives, and trajectory of the person before me into the legal form of a refugee. I was to treat anything about this person that did not fit the definition as irrelevant and extraneous. That is how legal categories operate. In the course of granting a person sanctuary in a church, you may apply the same refugee definition, but you will also have the opportunity (if you so choose) to acquire a much deeper acquaintance with the person before you. In the course of sharing time, perhaps breaking bread together, maybe exchanging stories and experiences, you may begin to doubt the utility and necessity of allocating and confining people to the categories created by immigration and refugee law. You may arrive at a sense that this person *ought not* to be regarded as a stranger, indeed *is not* a stranger, regardless of what his or her passport says. And if, through these relationships, you come to query the very exercise of drawing the borders that define, deny and exclude the Other, perhaps that unease is not such a bad thing. ■

faculty NOTES

Faculty members are dedicated to excellence in teaching, research, scholarship, publishing and the sharing of ideas in a variety of academic settings. From April 2004 to October 2005, U of T law professors were busy with a long list of activities and accomplishments.


ALARIE


BENSON


BRUNNÉE


CHAPMAN


CHOUDHRY


COOK

BEN ALARIE

Published "Divided Entitlements and Intermediate Default Rules" (2004) *9 Stanford Journal of Law, Business & Finance* 135; and "An Income-Contingent Financing Program for Ontario" in Frank Iacobucci and Carolyn Tuohy, eds., *Taking Public Universities Seriously* (University of Toronto Press, 2005) at 555 (with David Duff). Presented with David Duff "An Income-Contingent Financing Program for Ontario" at Taking Public Universities Seriously Conference at the University of Toronto (December 2004); and "Taxing Strike Pay" at both the Canadian Association of Law Teachers Conference at the University of British Columbia (June 2005) and at the University of Waterloo Tax Policy Research Symposium (August 2005). Edited Alexander Fruehmann and Tibor R. Nagy, Aktiengesetz: The Austrian Stock Corporation Act, Bilingual Edition, Deutsch/Englisch (Vienna: MANZ, 2005).

PETER BENSON

In addition to teaching contracts, I am teaching two courses in jurisprudence, the first of which focuses on the theory of private law (primarily the work of Aristotle, Kant and Hegel) and the second of which deals with the theory of social and political justice (primarily the work of John Rawls). My writing continues to be in the areas of legal theory, contract, and tort. In March, 2006, I will be presenting a paper "The Morality of Contract" at a conference "Law and Morality" at The College of William and Mary School of Law Institute of Bill of Rights in Williamsburg, Virginia. In this paper, I try to set out the basic normative (moral) structure and character of contractual relations and the place of contract within the theory of private law. In June, 2006, I present a paper "Does White v. Jones represent Canadian law" at a conference "Emerging Issues in Tort Law" at the University of Western Ontario Law Faculty. This paper deals with a controversial issue in tort law on a rights-based approach. Finally, I am completing a long draft on the analysis of tort liability for pure economic loss in American law. In this paper, I explain the basis and rationale for the seminal U.S. Supreme Court decision of Robins Dry Dock v. Flint. Next year, I hope to take sabbatical leave and begin work on a book on a theory of contract law and, more generally, of private law.

JUTTA BRUNNÉE

Publications: "The United States and International Environmental Law: Living with an Elephant," (2004) 15 *Eur. J.Int'l* L. 617-649; "Reweaving the Fabric of International Law? Patterns of Consent in Environmental Framework Agreements," in Wolfrum & Röben, eds., *The Development of International Law in Treaty-Making?* 101-126 (2005). Jutta Brunnée and Stephen J. Toope: "Slouching Towards New Just Wars: International Law and the Use of Force after September 11," (2004) *Netherlands Int'l L. Rev.* 363-392; "The Use of Force: International Law after Iraq," (2004) 53 *Int'l & Comp. L. Q.* 785-806; "Canada and the Use of Force: Reclaiming Human Security," (2004) 59 *Int'l J.* 247-260; "A Hesitant Embrace: Baker and the Application of International Law by Canadian Courts," in Dyzenhaus, ed., *The Unity of Public Law* 357-388 (2004). **Presentations:** "The Use of Force: International Law after Iraq," Chatham House & British Institute of International and Comparative Law, London, U.K. (May 2004) (with S.J. Toope); "International Environmental Liability Regimes: Comparative Advantage?" AALS Conference on Environmental Law, Portland, Oregon (June 2004); "Enforcement Mechanisms in International Law," *Ensuring Compliance with Multilateral Environmental Agreements* Conference, Max-Planck-Institute for Comparative Public Law and International Law, Heidelberg, Germany (October 2004); and "The Security Council and Self-Defence: Which Way to Global Security?" *The Security Council and the Use of Force* Conference, Leiden, Netherlands (September 2004).

BRUCE CHAPMAN

In April 2004, Professor Chapman delivered "Common Knowledge, Communication, and Public Reason" to the European Public Choice Society Meetings in Berlin (now published in 79 *Chicago-Kent Law Review* 1151 (2004)). In May 2004 he presented his papers"Economic Analysis of Law and the Value of Efficiency" and "The Rational Actor in Law: Solving the Problem of Rational Commitment" at the University of Siena and the University of Trento. He was invited to lecture on "Legal Analysis of Economics: Solving the Problem of Rational Commitment" at the University of Athens (November 2004) and at Carleton University (January 2005). Professor Chapman presented his paper "Private Rationality and Public Reasonableness" to the conference of the European Association of Evolutionary Political Economy at the University of Crete (October 2004), to the World Congress of Philosophy of Law and Social Philosophy in Granada (May 2005), and to the meeting of the International Society for New Institutional Economics in Barcelona (September 2005). This paper is now published in 3 *American Philosophical Association Newsletter on Philosophy and Law* (Spring 2004). Other recent publications include "Rational Commitment and Legal Reason" 42 *San Diego Law Review* 91 (2005); and "Rational Choice and Reasonable Interactions" 80 *Chicago-Kent Law Review* (2005).

SUJIT CHOUDHRY

Professor Choudhry has recently completed editing two books, *The Migration of Constitutional Ideas* (Cambridge University Press, forthcoming 2006) and *Dilemmas of Solidarity: Redistribution in the Canadian Federation* (University of Toronto Press, forthcoming 2006, co-edited with colleagues Jean-François Gaudreault-Desbiens and Lorne Sossin). He is currently working on a book, tentatively entitled, *Multinational Federations and Constitutional Failure: The Case of Quebec Secession,* and has recently published articles on the Supreme Court's Chaoulli decision, the Supreme Court appointments process, the impact of the cities agenda on Canadian federalism, the legal framework for intergovernmental transfers in comparative perspective, the problem of revolutionary legality, nation-building in ethnically divided societies, specialty hospitals, and the legal regulation of referral incentives for physicians. He currently serves on a three-member panel appointed by Toronto City Council, the Governing Toronto Advisory Panel, which is examining the structure of government in Toronto, is a member of the Academic Advisory Committee, Democratic Renewal Secretariat, Province Of Ontario, and served as a consultant, World Bank Institute, World Bank.

REBECCA COOK

Visiting Professorships: Faculty of Law, University of the Free State, Bloemfontein, South Africa, Professor Extraordinarius, 2004-2006, and taught a two-week intensive course at Washington College of Law, American University, Washington, DC, from January 10-19, 2005. **Books:** Updated French edition (forthcoming 2005) and revised Portuguese edition (2005) of *Reproductive Health and Human Rights* (with B.M. Dickens and M.F. Fathalla); *Health and Human Rights, International Library of Medicine, Ethics and Law series,* edited with Charles Ngwena (Aldershot, UK: Ashgate, forthcoming 2006). *Women's Access to Justice: the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women,* by Rebecca J. Cook and Simone Cusack (forthcoming, University of Pennsylvania Press, 2006/7). **Reports and Briefs:** "The Prohibition of Polygamy and Canada's Compliance with its International Human Rights Obligations," Final Report for the Department of Justice, Canada (with Lisa Kelly). **Awards:** Professor Extraordinarius, University of the Free State, Bloemfontein, South Africa (2004-06). Best first-time contribution to the Journal of Juridical Sciences, Society of the holders of the Moritz Bobbert Medal Prize, 2005. **Editorial Advisory Boards:** The Hong Kong Review of Law and Public Policy (2005-). **Board of Directors:** Center for Reproductive Rights, New York, NY (2005-). **Community Activities:** For Amnesty International and Amnesty International Canada, provide on-going legal advisory work regarding their campaign against violence against women, rape and access to treatment.

BERNARD M. DICKENS

Books: French edition (forthcoming 2005) and revised Portuguese edition (2005) of *Reproductive Health and Human Rights* (with R.J. Cook and M.F. Fathalla). Chapters include "Informed Choice" in *Dental Law in Canada;* "Legal Issues" in *Dementia.* **Review-Essays:** "Biotechnology Foreseen and Forestalled," "Surrogate Motherhood: International Perspectives," "International bioethics: reaching beyond national borders". **Articles:** "Adolescents' Reproductive Health Care" (with R.J. Cook) in the World Health Organization's *Entre Nous;* "The Challenges and Opportunities of Ethics" *American Journal of Public Health;* 5 columns on ethical and legal Issues in International Journal of Gynecology and Obstetrics. "Dimensions of Informed Consent to Treatment"; "Adolescents and Consent to Treatment"; "Safe Abortion: WHO Technical and Policy Guidance"; "Obstetric Fistula: The Challenge to Human Rights"; "Preimplantation genetic diagnosis and 'savior siblings'." **Editorial work:** Health Policy and Ethics editor, *American Journal of Public Health.* **International Committees:** Ethical Aspects of Human Reproduction & Women's Health, International Federation of Gynaecologists and Obstetricians (FIGO); International Scientific Committee, UNESCO Conference on Science Law and Ethics. **National Supervisory Committees:** Chair, Research Ethics Board, Health Canada; Member, Stem Cell Oversight Committee, Canadian Institutes for Health Research. **Invited Presentations:** Hong Kong SARS Forum 2004; workshops in New Delhi, Mumbai and Pune, India; and Federation of Obstetrician and Gynecologist Societies of India.

DAVID DUFF

Professor Duff taught basic and corporate tax, launched the Faculty's *James Hausman Tax Law and Policy Workshop* with Professor Benjamin Alarie, served on the editorial board of the *Canadian Tax Journal* and as co-editor of the "Current Tax Reading" section, presented papers at several workshops and conferences, and published a number of articles: "Benefit Taxes and User Fees in Theory and Practice" (2004), 54 *University of Toronto Law Journal* 391-447; "Private Property and Taxation in a Libertarian World: A Critical Review" (2005), 18 *Canadian Journal of Law and Jurisprudence* 23-45; "An Income-Contingent Financing Program for Ontario," in Frank Iacobucci and Carolyn Tuohy, eds., *Taking Public Universities Seriously,* (Toronto: University of Toronto Press, 2005) 554-96 (with Professor Benjamin Alarie); "The Abolition of Wealth Transfer Taxes in Canada," in John Tiley, ed., *Studies in the History of Tax Law,* vol. 2 (Oxford: Hart Publishing, forthcoming 2006); "Redistribution, Taxation, and Federalism," in Sujit Choudhry, Jean-François Gaudreault-DesBiens, and Lorne Sossin, eds., *Dilemmas of Solidarity: Rethinking Redistribution in the Canadian Federation,* (Toronto: University of Toronto Press, forthcoming 2006); and "Road Pricing in Theory and Practice: A Canadian Perspective" in Kurt Deketelaere, Larry Kreiser, Janet Milne, Hope Ashiabor, and Alberto Cavaliere, eds., *Critical Issues in Environmental Taxation III,* (Richmond, UK; Richmond Law and Tax, forthcoming 2006) (with JD student Carl Irvine). Professor Duff's current research is focused on tax policy and distributive justice; the history of taxation, and environmental taxation.

ANTHONY DUGGAN

I completed a two-year term as Associate Dean on June 30, 2004, and for the following 12 months, was on sabbatical leave based at the University of Auckland. As a result, I was able to write and have published: "Constructive Trusts and the Deemed Agency Limitation" (2004) 83 *Canadian Bar Review* 151; "Constructive Trusts From A Law And Economics Perspective" (2005) 55 University of Toronto Law Journal 217; Canadian Bankruptcy Law Reform (2005) 13 *Insolvency Law Journal 1; The PPSA and the Common Law* (2005) 11 *New Zealand Business Law Quarterly* 122; and *Exemplary Damages in Equity, Oxford Journal of Legal Studies* (forthcoming). I taught a course on Secured Transactions in the University of Auckland's LL.M. program and a course on Commercial Equity in the University of Melbourne's LL.M. program. I presented papers at a conference on the law of obligations held at the University of Melbourne in July 2004 and at a workshop on bankruptcy law in Brisbane in March 2005. I gave a Faculty seminar at the University of Auckland in May 2005 and was the main speaker at a seminar on secured transactions run by the University of Auckland's Research Centre for Business Law in February 2005.

DAVID DYZENHAUS

Guest Lectures: "The State of Emergency in Legal Theory", conference on terrorism, National University of Singapore, June 2004; "Disobeying Parliament? Privative Clauses and the Rule of Law", Centre for Constitutional Studies Conference on Constitutions and Legislatures, Banff, July 2004; "The Logic of the Rule of Law Lessons from Willis", conference on John Willis, Toronto, September, 2004; "Consent, Legitimacy and the Foundation of Political and Legal Authority," conference on consent, University of Victoria, October 2004; "The Constitution of Law". The JC Smuts Memorial Lectures delivered to the Law Faculty of the University of Cambridge, November, 2004; and "The State of Emergency in Legal Theory", Constitutional Theory Workshop, Law Faculty, Texas at Austin, November 2004. **Published:** "The Case for Public Investment in the Humanities" in Iacobucci and Tuohy, eds, *Taking Public Universities Seriously* (University of Toronto Press, 2005) 164-73; "Constituting the Enemy: A Response to Carl Schmitt" in A Sajo, ed., Militant Democracy (Eleven International Publishing: The Netherlands, 2004) 15-45; "The Unwritten Constitution and the Rule of Law" in G Huscroft and I Brodie, eds. *Constitutionalism in the Charter Era* (LexisNexis: Canada, 2004) 383-412; and "The Deep Structure of Roncarelli v Duplessis" (2004) 53 *University of New Brunswick Law Journal* 111-154.

ANVER A. EMON

Anver M. Emon joined the Faculty in July and has been busy on several fronts. He has an article coming out in the *Journal of Law and Religion* on natural law and natural rights in medieval Islamic law, and is working on a second one concerning the use of juristic discretion in Islamic law to fashion an early rights discourse in the tradition. When Anver arrived in Toronto, the debate on Sharia arbitration was in full swing and he contributed to the debate by writing op-eds for both the National Post and Globe and Mail, and providing interviews for both newspaper and radio.

ANGELA FERNANDEZ

The academic term 2004/2005 was the first year Angela Fernandez spent at the Faculty, where she taught Contracts in the first-year program and an upper-year course in legal history, and an introductory course in nineteenth-century Canadian and American legal history. The year was a busy one, with participation in a number of Faculty events, including the Bijuralism Bridge Week, "Literature Through the Lens of Law," and the Faculty Workshop, where she presented ongoing research on her Yale J.S.D. project in the history of legal education. Conference travel included the meeting of the Association of American Legal History in Austin, Texas. Angela was also a Fellow at a two-week summer seminar in legal history at the Institute for Legal Studies at the University of Wisconsin in Madison. Teaching in the fall of 2005 includes Legal Process as well as Contracts. The following article appeared this summer: "Record-Keeping and Other Trouble-Making: Thomas Lechford and Law Reform in Colonial Massachusetts," 23 *Law and History Review (2005): 235-77.*

COLLEEN FLOOD

I returned from sabbatical in New Zealand and Australia in July 2005. Since then I have been involved in debates over public and private insurance. With Lorne Sossin and Kent Roach I organized a conference on the Supreme Court's decision of *Chaoulli* the result of which is a book called *Access to Care, Access to Justice: The Legal Debate Over Private Health Insurance in Canada* – published within three weeks of the date of the conference by the University of Toronto Press. I contributed two chapters to the book – the first about the misunderstanding the majority of the court displayed on the dynamics between public and private insurance and the second on measures that could be taken to charter-proof a health care system. I have also contributed several other articles, written several opinion editorials, and given a number of radio interviews on the subject. In addition I am serving on the Editorial Board of the new *Canadian Journal of Healthcare Policy.* I am also co-editing (with Larry Gostin and Lance Gable) a special edition of the *Journal of Law, Medicine and Ethics* called "Legislating and Litigating Health Care Rights Around the World." I have also been consulted by various levels of government in Canada and New Zealand on health law and policy issues.


DICKENS


DUFF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EMON


FERNANDEZ


FLOOD

JEAN-FRANÇOIS GAUDREAULT-DESBIENS

Professor Gaudreault-DesBiens co-edited a book, *The Moods and States of Federalism: Governance, Identity, and Methodology,* (Bruylant & Éditions Yvon Blais, 2005) (with F. Gélinas), and published five articles: "The Limits of Private Justice? The Problems of State Recognition of Faith-Based Arbitral Awards in Family and Personal Status Disputes in Ontario", (2005) (1) *World Arbitration and Mediation Report* 18-31; "Chaoulli and the Quebec Charter of Human Rights and Freedoms: The Ambiguities of Distinctness", in C. Flood, K. Roach & L. Sossin (eds.) Access to Care, Access to Justice (UTP, 2005), pp. 32-55 (with C.-M. Panaccio); "La transformation du fédéralisme canadien sous l'impulsion du Conseil de la Fédération?" [2004] 2 *Revue belge de droit constitutionnel* 243-281; "El Consell de la Federacio i els Reptes Contenporanis des Federalisme Canadenc", (2005) El Clip, no. 29, January 2005, 26 p.; "Une anthropologie juridique rimbaldienne?", in: E. Le Roy, ed., *Anthropologie et droit. Intersections et confrontations,* (Paris: Karthala, 2004), pp. 171-178. He is co-editing with S. Choudhry and L. Sossin, *Dilemmas of Solidarity: Redistribution in the Canadian Federation,* (UTP, forthcoming 2006). He was keynote speaker at the conference "Neutrality and Impartiality in Alternative Dispute Resolution", at


GAUDREAULT-DESBIENS


GREEN


HIRSCHL


IACOBUCCI


KATZ


LANGILLE


LEE

Dickinson Law School, Penn State University. He was also a Distinguished Visiting Professor at the Frederick Cox International Law Center of Case Western Reserve University, Cleveland, and Visiting Professor at the Université d'Aix-Marseille III.

ANDREW GREEN

In the past year, I continued my research into domestic environmental law and international trade. I published a paper on how trade rules constrain domestic governments' ability to implement climate change policies ("Climate Change, Domestic Regulatory Policy and the WTO" (2005) 8(1) *Journal of International Economic Law* 143). I also presented papers on trade rules and subsidies at the American Law and Economics Association meetings, on environmental subsidies and social norms at the Canadian Association of Law Teachers Meetings and on government policies on wind power at the Global Conference on Environmental Taxation (with David Duff). I am currently teaching environmental law, international trade and a new capstone course on Canada-US relations (involving Canadian Ambassador to the US, Frank McKenna) and in the winter term will teach administrative law. I am also co-director (with Jutta Brunnee) of the Faculty's Environmental Law Program.

RAN HIRSCHL

In spring 2004 Professor Hirschl published *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Harvard University Press). Since then, he has published articles on comparative constitutional law and politics in the *Texas Law Review, International Journal of Constitutional Law, American Journal of Comparative Law,* and *The Good Society;* a book chapter in *Constitutional Politics in Canada and the United States* (SUNY Press, 2004); a book chapter co-authored with Ayelet Shachar in *The Gender of Constitutional Jurisprudence* (Cambridge University Press, 2005); as well as book reviews in *The Law & Politics Book Review and the American Journal of Legal History.* Additional articles and book chapters of his have been accepted for publication in the *Fordham Law Review, Texas Law Review, The Migration of Constitutional Ideas* (Cambridge University Press); *Modernity in Question: Montesquieu and His Legacy* (SUNY Press), the *Oxford Encyclopedia of the Modern World* (Oxford University Press), and *Oxford Handbook of Law and Politics* (Oxford University Press). In the last year he has presented his work in over twelve conferences and workshops across North America. He is now editing (with Christopher Eisgruber) a special symposium issue of the *International Journal of Constitutional Law* entitled "North American Constitutionalism." Recently, he was named Fellow at the Center for Advanced Study in the Behavioral Sciences, Stanford (2006-07) – an honour that is normally reserved to a small number of senior scholars.

EDWARD IACOBUCCI

Publications: "The Political Economy of Deregulation in Canada" (2005), forthcoming, Martin Levin and Martin Shapiro, eds., T*he Economics and Politics of Creating Competitive Markets.* Co-authors: Michael Trebilcock and Ralph Winter; "Economic Deregulation of Network Industries: Managing the Transition to Sustainable Competition" (2005), forthcoming, *University of Toronto Law Journal.* Co-authors: Michael Trebilcock and Ralph Winter; "Predatory Pricing, the Theory of the Firm and the Recoupment Test: An Examination of Recent Developments in Canadian Predatory Pricing Law" (2005), forthcoming, Antitrust Bulletin; "Imperfect Information and Conspiracy Class Actions" (2005), forthcoming, Stephen Pitel, ed., *Conspiracy Class Actions;* "Asset Securitization and Asymmetric Information" (2005) 34 *Journal of Legal Studies* 161. Co-author: Ralph A. Winter; and "Public Funding, Markets and Quality: Assessing the Role of Market-Based Performance Funding for Universities" in F.Iacobucci and C. Tuohy, *Taking Public Universities Seriously* (Toronto: University of Toronto Press, 2005). Co-author: Andrew Green.
Presentations: "Tying, Switching Costs and Warranties," presented at Canadian Law and Economics Association's Annual Meeting, Toronto, September 2005; "Imperfect Information and Conspiracy Class Actions," presented at University of Western Ontario conference, Conspiracy Class Actions, March 2005; and "Revisiting the Law and Economics of Franchise Tying Contracts," presented at American Law and Economics Association's Annual Meeting, New York University, May 2005, University of Southern California Law and Economics Workshop, October 2004, and Faculty of Law, University of Toronto Workshop, October, 2004.

ARIEL KATZ

Since April 2004 I presented several papers at the following conferences: on the competition law and intellectual property at the Faculty of Law, Haifa University Israel; the 2004 Annual Meeting of the American Law and Economics Association, the 2004 Annual Congress of the Society for Economic Research on Copyright Issues; the 2004 Annual Meeting of the Canadian Law and Economics Association; the 2005 Annual Meeting of the Israeli Law and Economics Association; the 2005 Annual Meeting of the American Law and Economics Association, the 2005 Annual Congress of the Society for Economic Research on Copyright Issues; and the 2005 Annual Meeting of the Canadian Law and Economics Association. In April 2005, I successfully defended my doctoral thesis: "Issues at the Interface of Antitrust and Intellectual Property Laws," and was awarded the *Hartle Award of the Institute for Policy Analysis,* University of Toronto for outstanding graduate scholarship. My paper "A Network Effects Perspective on Software Piracy" was published in vol. 55(2) of the *University of Toronto Law Journal.*

BRIAN LANGILLE

Professor Langille has served as Interim Dean of the U of T Faculty of Law since July 2005, after having served as Acting Dean in 2003-04. In 2004-05, he was a Visiting Scholar, International Institute for Labour Studies, Geneva, and, Program for the Study of International Institutions Fellow, Graduate Institute for International Studies, Geneva. Presentations: "What is Labour Law?" (keynote speaker), Conference of Canadian Labour Boards, Prince Edward Island; "Core Labour Rights The True Story" European University Institute, Italy; "What is the ILO Declaration For?" European University Institute, Italy and ILO Governing Body Public Lecture, Geneva; "How to Think About the Internationalization of Employment," France/ILO Symposium on the Social Dimension of Globalization, France; and "Labour Law's Back Pages," Conference on The Scope of Labour Law, Rockefeller Foundation Centre, Italy. Publications: The Boundaries and Frontiers of Labour Law (Davidov and Langille, eds) (forthcoming, Hart Publishing); "Globalization and The Just Society: Core Labour Rights, The FTAA, and Development", (forthcoming) in Graig, (ed.) Globalization and International Labour Law (Cambridge University Press, 2005); "Core Labour Rights The True Story" (2005), 16 European Journal of International Law 1-29 (forthcoming); and "The WTO and Labour Rights Man Bites Dog," (with Howse), forthcoming in Leary and Warner (eds), Social Issues, Globalization, and International Institutions (Martinus Nijhoff, 2005) 157-231.

IAN LEE

In 2004-05, Professor Lee taught Law of the European Union, Business Organizations, and Corporate Social Responsibility. The latter was a first-year elective offered for the first time in the winter 2005 term. Professor Lee's article, "Corporate Law, Profit Maximization and the 'Responsible' Shareholder" is forthcoming in the *Stanford Journal of Law, Business & Finance.* His article "Is There a Cure for Corporate 'Psychopathy'?" is forthcoming in the *American Business Law Journal.* In addition, he published a comment on the Supreme Court of Canada's decision in *Peoples Department Stores v. Wise* in the *Canadian Business Law Journal.* This year, Professor Lee presented his research at the annual meetings of the Canadian Association of Law Teachers and the

Canadian Law and Economics Association, and at a retreat organized by the George Washington University Law School — Sloan Program. He was also an invited speaker at the annual meeting of the American Association of Law Libraries, where he delivered a lecture entitled, "Is There a Constitutional Crisis in the European Union?" Professor Lee served on the admissions, diversity, international advisory, appeals reform and short-term curriculum committees at the Faculty of Law, and as faculty advisor to the Laskin Moot team.

TRUDO LEMMENS

Between May 2004 and October 2005, Professor Lemmens lectured at the Institute for Advanced Studies in Princeton; at the Universities of Otago (New Zealand) and Tasmania (Australia), and at conferences in Washington, Ottawa, Toronto, Paris and St. John's (NF). He co-organized at the Faculty of Law a Health Law Day on Genetics in Insurance and Employment; and an International Workshop on the Regulation of Research Ethics Review, at which participants of more than 15 countries and of international organizations (WHO & CIOMS) participated. Professor Lemmens taught courses on Privacy, Property and the Human Body; the Regulation of Medical Research and Research Ethics. He also co-organized the *Legal Ethics and Professionalism* Bridge Week. His publications include chapters in Law Commission of Canada, ed., *Law and Risk,* (Vancouver: University of British Columbia Press, 2005) and in C. Flood, K. Roach & L. Sossin, *Access to Care, Access to Justice* (University of Toronto Press, 2005). His articles include: "Leopards in the Temple: Restoring Integrity to the Commercialized Research Scene" (2004) 32(4) *Journal of Law, Medicine & Ethics* 641; "Piercing the Veil of Corporate Secrecy About Clinical Trials" (2004) 34(5) *Hastings Center Report* 14; "The Accommodation of Genetic Uncertainty in Canadian Insurance Law" (2004) 83 *Canadian Bar Review* 357; "CIOMS' Placebo Rule and the Promotion of Negligent Medical Practice" (2004) 22 *European Journal of Health Law* 153 (with D. Sprumont, H. Nys, J. Singh & K.C. Glass). Other articles appeared in the *Health Law Review, Monash Bioethics Review,* and the *Canadian Medical Association Journal* (on-line edition).

PATRICK MACKLEM

Professor Macklem continues to write and teach in the areas of international human rights law, constitutional law, and labour law. He published "Rybná 9, Praha 1: Restitution and Memory in International Human Rights Law" (2005) 16 *European Journal of International Law* 1-23; and "The Right to Bargain Collectively at International Law: Labour Right, Human Right, International Right?" in P. Alston, ed., *Labour Rights as Human Rights* (Oxford University Press, 2005). On the public policy front, he testified before the Senate Committee on Aboriginal Peoples, and, with Michael Trebilcock, wrote a research report on "New Labour Standards Strategies: Corporate Codes of Conduct and Social Labeling Programs" for the *Federal Labour Standards Review.* He presented his academic work at conferences and workshops at Bellagio, Central European University; University of Girona; the New School for Social Research; Cardozo Law School, and University of Arizona. He was appointed to the Canada Research Chairs College of Reviewers. In 2005-2006, he is teaching constitutional theory, constitutional law, and international human rights law, and continues to be a Visiting Professor at Central European University, where he teaches international human rights law and comparative constitutional law.

AUDREY MACKLIN

Professor Audrey Macklin devoted much of the 2004-5 academic year to a transnational domestic project: she adopted a six-month old baby girl from Ethiopia. Audrey considers the process leading up to her journey to Ethiopia, followed by her return to Canada with Adina, to constitute field work in the vagaries of migration and citizenship law. Between April 2004 and September 2005, Audrey also managed to write, revise, or publish: "Can We Do Wrong to Strangers?," in D. Dyzenhaus and M. Moran, ed., *Calling Power to Account: Law Reparations, and the Chinese Canadian Head Tax Case"* (Toronto, U of T Press, 2005); "Disappearing Refugees," (2005) 36 *Columbia Human Rights Law Review* 101-161; "Guest Introduction," (2004) 3 *U of T Journal of Law & Equality* 1-6 (symposium issue on migration, citizenship and equality);"The Double-Edged Sword", in R. Abusharaf, ed., *Female Genital Mutilation: Multicultural Perspectives* (University of Pennsylvania Press, forthcoming 2005). She continues to work with co-authors on a book concerning state regulation of transnational enterprises operating in conflict zones. In addition to various presentations and guest lectures, Audrey also delivered the Annual Richard Craddock Lecture, at Bloor Street United Church on the theme of "Sanctuary Under Siege: Ethical and Legal Dimensions of Church Sanctuary."

MAYO MORAN

I was on sabbatical in 2004-05 and presented at several conferences in Canada, the United States and Australia. I published a number of papers on the nature of legal authority, focusing on the relationship between domestic and international law, public and private law, including "The Estoppel Effects of International Law," in G. Williams and H. Charlesworth (eds), *The Fluid State,* (Sydney: Federation Press 2005) and "Shifting Boundaries: Influential Authority and Binding Law" forthcoming in *New Perspectives on the Divide Between National and International Law.* I also published on related ideas in comparative constitutional law including "Inimical to Constitutional Values: Complex Migrations of Constitutional Rights" forthcoming in S. Choudhry (ed), *The Migration of Constitutional Ideas,* (Cambridge: Cambridge University Press.) On constitutional equality, I published "Protesting Too Much?: Rational Basis Review Under Section 15" forthcoming in S. Rodgers and S. McIntyre (eds) *Essays on the 20th Anniversary of Section 15.* Along with my colleague, Darlene Johnston and the International Centre for Transitional Justice, in September I organized a colloquium designed to support the on-going residential schools discussions, "Facing the Legacy of Indian Residential Schools: International Lessons in Truth Commissions, Reparation and Reconciliation." With my colleague, Lorraine Weinrib, the Department of Justice and the Attorney-General's office, I also helped to organize a conference in late October celebrating the 20th anniversary of s.15, "Equality: The Heart of a Just Society: Looking Back, Looking Forward."

EDWARD MORGAN

In June 2004 I was elected national president of Canadian Jewish Congress, and in that capacity have been representing the Jewish community in a number of different forums, including the 60 year Auschwitz memorial ceremonies in Poland in January 2005 and the Organization of European Security special meeting on anti-Semitism in July 2005. I appeared in the Supreme Court for the liberal rabbis of Canada in the *Same Sex Marriage Reference* in October 2004, testified before the Senate committee on its review of the *Anti-Terrorism Act* in September 2005, and was a keynote speaker at the Assembly of First Nations national meeting of chiefs in July 2005. I was on sabbatical during 2004-05, during which time I taught an intensive course in International Criminal Law at Haifa University and published articles in U of T's new *Journal of International Law and Relations,* the *Leiden Journal of International Law,* and the *Journal of Law, Culture & Humanities.*

JIM PHILLIPS

Published: Various articles plus *From Enforcement and Prevention to Civic Engagement: Research on Community Safety* (Toronto: University of Toronto Centre of Criminology, 2004); editor with Bruce Kidd, Philip Girard and J. Barry Cahill, *The Supreme Court of Nova Scotia 1754-2004: From Imperial Bastion to Provincial Oracle* (Toronto: Osgoode Society for Canadian Legal History and the University of Toronto Press, 2004). **Invited Talks:** Yale University, University of Alberta, University of Central Lancashire (UK). **Other:** Director of Centre of Criminology until June 2005. **Best part of job:** Teaching Property.

DENISE RÉAUME

Conferences: "The Relevance of Relevance" presented at a colloquium in honour of John Whyte, Queen's University, September 2005. Participant, Inaugural Session of the Women's Court of Canada, Biennial Conference of the National Association of Women and the Law and West Coast LEAF, Vancouver, May 1, 2005. "Language Rights: Constitutional Misfits or Real Rights", presented at a conference, "Languages, Constitutionalism and Minorities", University of Ottawa, November, 2004. **Workshops:** Human/Equality Rights Consultation, sponsored by LEAF, May 14-15, 2005; Canadian Journal of Women and the Law Junior Scholars Workshop, commentator, May 2-3, 2005; and Analytical Legal Philosophy Conference, April 8-9, 2005. **Publications:** "Comparing Theories of Sex Discrimination: The Role of Comparison", review essay on Timothy Macklem, *Beyond Comparison: Sex and Discrimination,* (2005) 25


LEMMENS


MACKLEM


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PHILLIPS


RÉAUME

Oxford Journal of Legal Studies 547. **Faculty of Law Initiatives:** The Section 15 Project: a group Directed Research project which had students writing papers on equality law to mark the 20th anniversary of the coming into force of s. 15 of the *Charter.* Students had separate faculty supervisors, but met regularly as a group to present their work in progress to one another. Fifteen students wrote papers on a wide variety of issues related to equality rights. Professor Réaume has recently joined the Academic Freedom and Tenure Committee of the Canadian Association of University Teachers.

ARTHUR RIPSTEIN

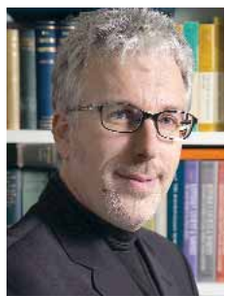
Publications: "Kant's Legal and Political Philosophy" forthcoming in T. Hill (ed.) *A Companion to Kant's Ethics* (Oxford: Blackwell, 2006); "Public and Private Benefits in Higher Education" in Frank Iacobucci and Carolyn Touhy (eds.) *Taking Public Universities Seriously* (Toronto: University of Toronto Press, 2005). **Invited Lectures:** "Beyond the Harm Principle," School of Law, University of California, Berkeley, November 2004; Kennedy School of Government, Harvard University, December 2004; and Legal Theory Workshop, Yale Law School, April 2005. **Radio**


RIPSTEIN


RITTICH


ROACH


ROGERSON


SCHNEIDERMAN


SHACHAR

Specials: "Borders and Boundaries" (With Seana Shiffrin and Michael Blake) IDEAS, CBC Radio 1, July 2005; "Authority"(with Seana Shiffrin and Gopal Sreenivasan) IDEAS, CBC Radio 1, May 2004; and "Coercion" (with Michael Blake and Gopal Sreenivasan) IDEAS, CBC Radio 1, June 2004. I also served as a member of Governing Council, and both its Business Board and Executive Committee, since July 2004.

KERRY RITTICH

Activities: *Jean Monnet Fellowship,* European University Institute, Fiesole, Italy (January - June 2005); *William Lyon Mackenzie King Visiting Professor of Canadian Studies,* Harvard Law School and the Weatherhead Center for International Affairs, Harvard University (fall 2004); and Convenor, *New Governance in a Globalized World: A Critical Evaluation of Soft Law and Non-State Norms and Regulation,* Canada Conference, Weatherhead Center for International Affairs, Harvard University (February 25-26, 2005). **Publications:** *Labour Law, Work and Family: Critical and Comparative Perspectives* (with Joanne Conaghan, Oxford University Press, 2005); "The Properties of Gender Equality," Philip Alston and Mary Robinson, eds., *Human Rights and Development: Toward Mutual Reinforcement* (Oxford University Press, 2005; and "The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social", 26 *Michigan Journal of International Law* 199 (2004). **Lectures and Presentations:** "The Future of Law and Development: Second Generation Reforms and the Incorporation of the 'Social'", (Hauser Colloquium), NYU Law School, March 9th, 2005; "The Intersection of Human Rights and Development" (panel), Harvard Law School Human Rights Program 20th Anniversary, October 16, 2004; and "Governance Norms and the Problem of Precarious Work" (workshop on Gender and Precarious Work), International Institute for the Sociology of Law, Onati, Spain, July 1-4, 2004.

KENT ROACH

Books: (with Robert J. Sharpe) *The Charter of Rights and Freedoms* 3rd ed (Toronto: Irwin Law, 2005); (with Todd Archibald and Ken Jull) *Regulatory and Corporate Liability: From Due Diligence to Risk Management* (Aurora: Canada Law Book, 2005); **Articles:** "Constitutional, Remedial and International Dialogues About Rights: The Canadian Experience" (2005) 40 *Texas Journal of International Law* 537-576; (with Gary Trotter) "Miscarriages of Justice in the War Against Terror" (2005) 109 *Penn. State Law Review* 967-1041; (with G. Budlender) "Mandatory Relief and Supervisory Jurisdiction: When is it Appropriate, Just and Equitable" (2005) 5 *South African Law Journal* 325-351; "Common Law Bills of Rights as Dialogue Between Courts and Legislatures" (2005) 55 U.T.L.J 733-766; (with Julian Roberts) "Conditional Sentences and the Perspectives of Victims: A Socio-Legal Analysis" (2005) 30 *Queens Law Journal* 560-600; "Victims Rights and the Charter" (2005) 49 *Criminal Law Quarterly* 474-516; "Militant Democracy and Anti-Terrorism Legislation:" in A. Sajo ed. *Militant Democracy* (2004) and translated in Russian in *Konstitutionnoe Provo* (Russian Constitutional Law Journal). **Invited Lectures:** Universities of Auckland, Cape Town, Minnesota, Regina, Sienna, Stellenbosch, Texas,11th UN Congress on Crime Prevention in Bangkok, Thailand, CBA Annual Meeting Vancouver, Keynote Speaker Associations Active in Criminal Justice, Ottawa.

CAROL ROGERSON

My main activity since April 2004 has been my work, together with Professor Rollie Thompson from Dalhousie Law School, on the Spousal Support Advisory Guidelines Project. The goal of this multi-year project, supported by Justice Canada, is to develop a set of informal, advisory guidelines, based on trends in current practice that will bring more structure and certainty to spousal support decisions. In January 2005 we released a complete draft of our proposed guidelines: Rogerson and Thompson, "Spousal Support Advisory Guidelines: A Draft Proposal" available at: www.justice.gc.ca/en/dept/pub/spousal/project With the release of the Draft Proposal the project has moved into the next phase, a one-to-two-year period of education, consultation, feedback and revision. Professor Thompson and I have participated in numerous CLE programs to explain the guidelines and are, as well, traveling around the country meeting with small groups of lawyers and judges to discuss the draft proposal and solicit feedback. In addition, I prepared two papers: "Miglin One Year Later" (paper prepared for the County of Carlton Law Association, 13th Annual Institute of Family Law Conference, Ottawa, June 18,2004) and "The Canadian Law of Spousal Support" (2004), 38 *Family Law Quarterly* 69.

DAVID SCHNEIDERMAN

Selected papers published or in press: "Habermas, Market-Friendly Human Rights, and the Revisibility of Economic Globalization" (2004) 8 *Citizenship Studies* 36; "Freedom of Expression in Canada" (with Kent Roach) in G-A. Beaudoin and E. Mendes, eds., *Canadian Charter of Rights and Freedoms,* 4th ed. (LexisNexis, 2005); "Banging Constitutional Bibles: Observing Constitutional Culture in Transition" (2005) 55 UTLJ 833; "Default Convergence: Human Rights and Fundamental Freedoms in North America" forthcoming in R. Jhapan, Y. Abu-Laban, and F. Rocher, eds., *North American Politics: Globalization and Culture* (forthcoming Broadview Press); "Property Rights, Investor Rights, and Regulatory Innovation: Comparing Constitutional Cultures in Transition" forthcoming in I*CON; "Constitution or Model Treaty? Struggling over the Interpretive Authority of NAFTA" in Sujit Choudhry, ed., *The Migration of Constitutional Ideas* (forthcoming in Cambridge University Press). The book *The Last Word: Media Reporting of the Supreme Court of Canada* (UBC Press) (with Florian Sauvageau and David Taras) is forthcoming in a French-language translation with University of Laval Press. **Selected papers presented at conferences:** "Administrative Law Today" in Honour of John Willis (Toronto 2004); "Strategizing Systemic Inequality Claims: Equality Rights and the Charter" (Ottawa 2005); "New Governance in a Globalized World" (Harvard 2005); and "Constitutionalism and Political Morality: A Symposium in Honour ofJohn Whyte" (Queen's 2005).

AYELET SHACHAR

Professor Shachar was the recipient of the Connaught Research Fellowship in the Social Science in the spring term 2005. **Publications:** "The Race for Talent: Highly Skilled Workers and Competitive Immigration Regimes," 80 *NYU Law Review* (2005); "Religion, State, and the Problem of Gender: New Modes of Citizenship and Governance in Diverse Societies," 50 *McGill Law Journal* (2005); "Constitutional Transformation, Gender Equality, and Religious/National Conflict in Israel: Tentative Progress through the Obstacle Course" (with Ran Hirschl) in *The Gender of Constitutional Jurisprudence,* edited by Beverly Baines and Ruth Rubio-Marin (Cambridge University Press, 2004); "The Law of Return," in *Immigration and Asylum Encyclopedia* (2005); "Birthright Citizenship as Inherited Property: A Critical Inquiry" in *Identities, Allegiances and Affiliations,* edited by Ian Shapiro and Seyla Benhabib (Cambridge University Press, forthcoming). Professor Shachar also contributed to the public debate on the relationship between religious accommodation and women's rights by delivering public lectures and workshops on the proposal to establish religious tribunals in Ontario. Her extensive writings were cited by the *Boyd Report* (December 2004). Professor Shachar presented her work at Princeton, Stanford, Michigan, Indiana, Georgetown and NYU, as well as the annual meetings of


SOSSIN


STEWART


TREBILCOCK


WADDAMS


E. WEINRIB


L. WEINRIB

the AALS, ACSL, and APSA. She also served as external reviewer for five peer-reviewed journals, two leading publishers, and three national research councils.

LORNE SOSSIN

Associate Dean Lorne Sossin's recent publications and commissioned reports include: Access to Care, Access to Justice: The Legal Debate on Private Health Insurance in Canada (Colleen Flood, Kent Roach & Lorne Sossin, eds.) (University of Toronto Press, 2005); Dilemmas of Solidarity: Rethinking Redistribution in the Canadian Federation (Sujit Choudhry, Jean-François Gaudreault-Desbiens & Lorne Sossin eds.) (University of Toronto Press, 2005) (forthcoming); "How Canadian Administrative Law Protections Measure up to International Human Rights Standards" (2005) 50 McGill Law Journal 193-264 (with Gerald Heckman); Constitutional Accommodation and the Rule(s) of Courts" (2005) 42 Alberta Law Review 607-33; Demystifying the Boundaries of Public Law: Policy, Discretion and Social Welfare" (2005) U.B.C. Law Review 147-87 (with Laura Pottie); "Speaking Truth to Power? The Search for Bureaucratic Independence" (2005) 55 University of Toronto Law Journal 1-60; "Defining Boundaries: The Constitutional, Legal and Administrative Argument for Bureaucratic Independence," paper commissioned by the Inquiry into the Sponsorship Affair (Gomery Inquiry) (August 2005) (forthcoming); "The Federal Court in Government" Report commissioned by the Department of Justice, Canada (with James Kelly) (March 2005) and; "Alternative Models of Court Administration" Report commissioned by the Canadian Judicial Council (with Carl Baar and Robert Hann) (January 2005).

HAMISH STEWART

Publications: "Persons and their Well-Being: A Critical Discussion of Kaplow and Shavell's *Fairness versus Welfare"* (2004) 30 *Queen's Law Journal* 1; "When Does Fraud Vitiate Consent? A Comment on *R. v. Williams"* (2004) 49 *Criminal Law Quarterly* 144; "Investigative Hearings into Terrorist Offences: A Challenge to the Rule of Law" (2005) 50 *Criminal Law Quarterly* 376; "The Privilege Against Self-Incrimination: Too Strong, Too Weak, or Both?" (with Erica Bussey) (2005) 9 *Canadian Criminal Law Review* 369; *Sexual Offences in Canadian Law* (Canada Law Book, 2004). **Conferences:** "The Application of the Concept of Possession in Criminal Law to Child Pornography on the Internet", Symposium on Online Child Exploitation, Faculty of Law, University of Toronto, 2 May 2005. **Judicial Education Workshops:** "Relevance", Alberta Court of Queen's Bench, November 2004; "The Drawing of Inferences: Relevance and Weight" (with Madam Justice Victoria Gray), National Judicial Institute Evidence Workshop, Quebec City, 22 August 2005; "The Principled Approach to Hearsay" (with Mr. Justice Peter Griffiths), Ontario Court of Justice, Kingston Regional Seminar, 14 October 2005.

MICHAEL TREBILCOCK

During the past year, Michael Trebilcock was a member of the editorial board of the *Journal of International Economic Law,* co-organized Bridge Week for 2005, and was a Visiting Professor at Yale Law School this past fall 2005, teaching International Trade Law. He had many books and chapters published, including Rethinking the *Welfare State: The Prospects for Government* (with Ron Daniels) by Voucher (Routledge 2004); *The Regulation of International Trade* (third edition, with Robert Howse (London: Routledge); *Hard Choices, Soft Law*, co-edited with John Kirton (Ashgate, 2004); *The Great Efficiencies Debate in Canadian Merger Policy* (2004 10 *New Zealand Business Law Quarterly* 298); *Regulated Conduct in the Competition Act* (2005 41 Canadian Business Law Journal 492); and *Towards a New Compact in University Education in Ontario* (with Ron Daniels) in Frank Iacobucci and Carolyn Tuohy, eds., *Taking Public Universities Seriously,* (University of Toronto Press, 2005). He also had a number of books and chapters accepted for publication including: "Merger Review in Regulated Industries" (with Margaret Sanderson, *Canadian Business Law Journal* (forthcoming); *The Lessons and Limits of Law and Economics* (University of Montreal Press); *Barriers to Trade* (with Michael Fishbein); "Critiquing the Critics of Economic Globalization" *(University of Toronto Journal of International Law);* "The Economics of Emigration and Immigration" (with Matthew Sudak, *New York University Law Review); Trade Policy and Labour Standards* (with Robert Howse, *Minnesota Journal of Global Trade); Regional Electricity Market Integration* (with Richard Pierce and Evan Thomas, C.D. Howe Institute, Commentary Series); and *Competition Class Actions* (with Margaret Sanderson), (a book of essays to be published by Irwin Canada).

STEPHEN WADDAMS

I have been awarded a SSHRC grant for research on the topic, "Principle and Policy in Contract Law: a Historical Perspective." I was appointed University Professor on July 1, 2005. My publications include: The Law of Contracts (fifth edition, 2005); *The Law of Damages* (annual update); *Introduction to the Study of Law* (sixth edition, 2004); article on Stephen Lushington in *Oxford Dictionary of National Biography,* vol 34, pp. 792-4; "Evidence of Witnesses in the English Ecclesiastical Courts (1830-1857)" in C. H. van Rhee (ed.); *The Law's Delay: Essays on Undue Delay in Civil Litigation* (Intersentia, Antwerp, 2004), pp. 343-360; and review of C. Stebbings, *The Private Trustee in Victorian England,* Canadian Journal of History, 39: 176-7.

ERNEST WEINRIB

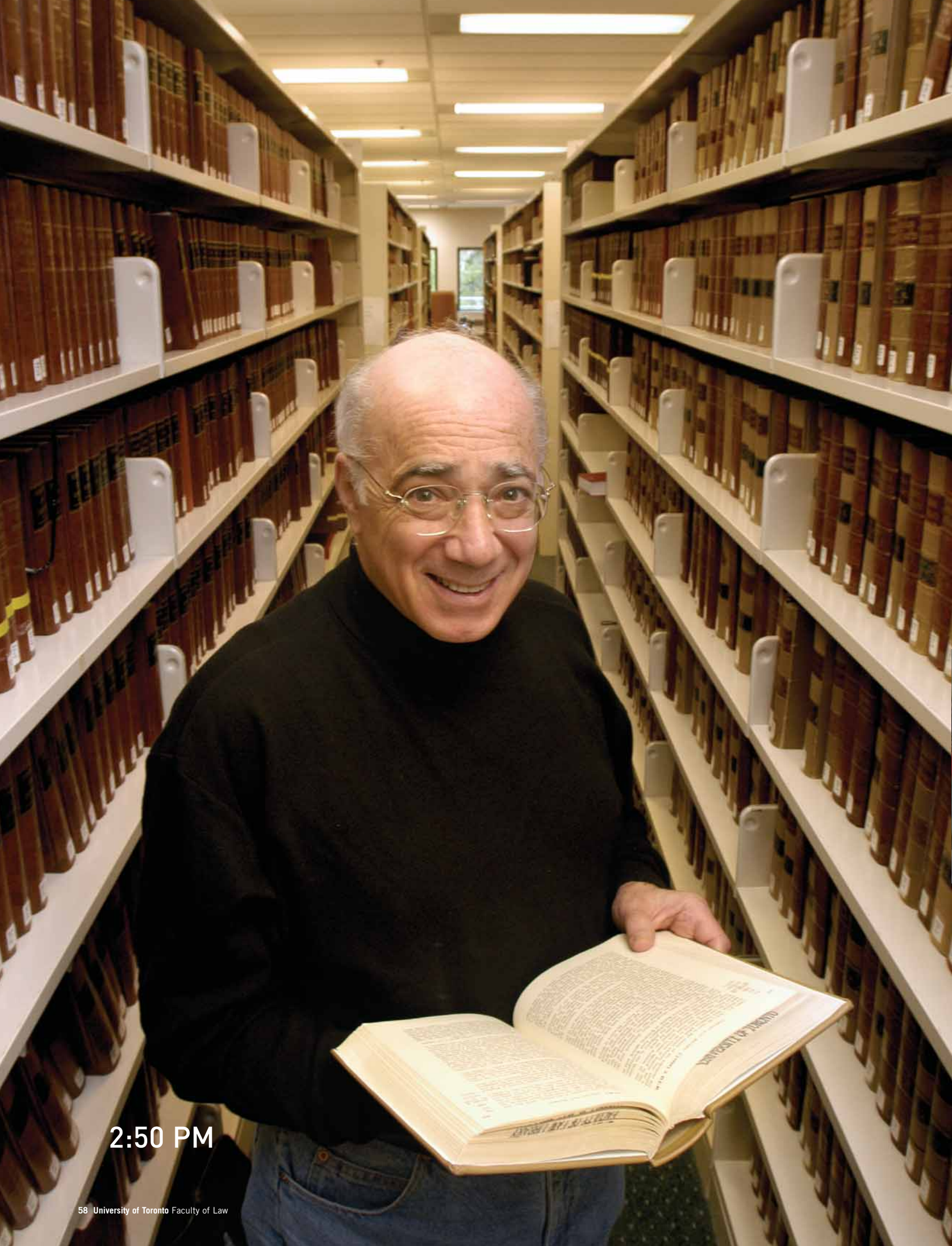
Publications: "The Disintegration of Duty" in Stuart Madden (ed.) *Exploring Tort Law* 143 (Cambridge University Press, 2005); "Restoring Restitution" 91 *Virginia Law Review* (2005) 861; "Tort Law Corrective Justice" *IVR Encyclopedia of Jurisprudence, Legal Theory, and Philosophy of Law;* "Law as a Kantian Idea of Reason" in Sharon Byrd and Joachim Hruschka (editors), Kant and Law (2005). Conference Presentations and Lectures: "Kinds of Formalism," Tel Aviv University Faculty of Law, Lecture in Jurisprudence, May 2004; "Structuring the Duty of Care" Haifa University Faculty of Law, Faculty Workshop, May 2004; "Kant's Legal Philosophy: Why Should Lawyers Care?" University of Pennsylvania Law School, Conference on Kant and the Law, September 2004. Visiting Professorships: Intensive course on "The Theory of Private Law" at University of Tel Aviv Faculty of Law, May 2004; Intensive Course on "Corrective Justice in a Comparative Context" at Tulane Law School Institute of Comparative Law, June 2004.

LORRAINE WEINRIB

Publications: "Comment", in Nolte, ed., *European and US Constitutionalism,* Cambridge U Press; "Constitutionalism in the Age of Rights – A Prolegomenon," (Oliver Schreiner Memorial Lecture, Johannesburg, 03), (2004) 121 SALJ at 278; "Human Dignity as a Rights-Protecting Principle", (2005) 17 NJCL; "The Charter's First Twenty Years: Assessing the Impact and Anticipating the Future", 2002 Isaac Pitblado Keynote Lecture (published by the Law Society of Manitoba); "Charter Perspectives on *Chaoulli* – The Body and the Body Politic", in Flood, Roach and Sossin, eds., *Access to Care: Access to Justice* (Toronto: U of T Press, 2005), "The Charter precludes unequal regimes", *Law Times,* October 3, 2005 (re: Sharia law arbitration). **Conference Papers:** "Not Dialogue: Institutional Roles in a Free and Democratic Society," Banff, July 2004; "U.S. Exceptionalism and the New Constitutional Paradigm," Toronto, October 4; "Constitutions without Borders: toward a methodology for constitutional borrowing," Toronto, October 2004; **Conference Organizing:** International Roundtable marking the opening of the new Canadian Embassy in Berlin, March 17-18, 2005; International Gay and Lesbian Lawyers Association Biennial Conference, "Rights are Right," June 26-29, 2005, Toronto, Program Committee Chair; "Equality, The Heart of a Just Society: Looking Forward, Looking Back", October 27-28, 2005, Faculty of Law, U of T. **Public activity:** "The Great Debate" – "Do We Really Need the Charter?" Ontario Justice Education Network, LSUC, April 13, 2005, contributor to "The Great Canadian," CBC documentary on Pierre Trudeau.

U OF T LAW PROFESSORS LEAD THE PACK IN RESEARCH AND SCHOLARSHIP

The University of Calgary recently published research data from 1981-2000 that compares research and publications' records of all Canadian universities and law schools. U of T, Faculty of Law garnered a whopping 45.65% of all Canadian law citations, and 21.77% of all Canadian law publications. By contrast, our closest competitor, Osgoode Hall Law School, had only 8.99% of law citations and 6.46% of law publications.



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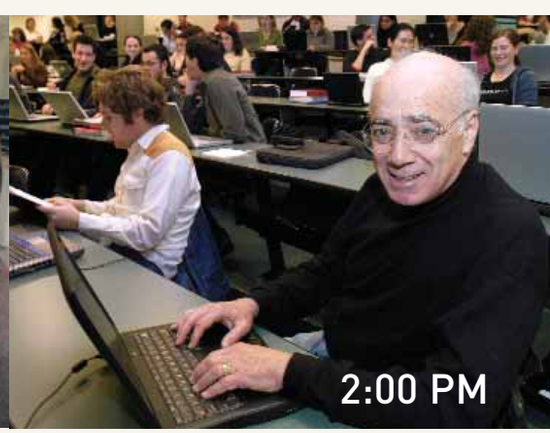
DEAN MARRUS GOES TO LAW SCHOOL

BY BRAD FAUGHT

Not everyday is it that a graduate school dean sends a letter of admission to himself. But such was the letter that landed on the desk of Michael Marrus in the spring of 2004. Approaching the end of seven years spent as head of the University of Toronto's School of Graduate Studies, Marrus gave himself official notification that after almost forty years as a distinguished historian of modern France and of the Holocaust he would be going back to school. Only this time the destination would not be the history stacks, but rather Flavelle House. He had enrolled in the Faculty of Law's Master of Studies in Law (MSL) program, a degree aimed at scholars of any discipline with a desire for a year's worth of formal legal education capped by a research project.



(L-R): Prof. Ernest Weinrib and Michael Marrus Marrus with fellow classmate David MacFarlane '06

"I loved it," is how Marrus answers a question about his year spent at the law school as we chat casually in his book-lined study at Massey College where he is currently a Senior Resident. As dean of the graduate school Marrus had dealt, on many occasions, with disciplinary and other issues that exposed him closely to the legal process. He liked what he saw, and moreover, much of his academic work as a member of U of T's history department as the Chancellor Rose and Ray Wolfe Professor of Holocaust Studies had led him over the years to investigate events such as the watershed Nuremberg Trials held to try Nazi war criminals after the Second World War, as well as more recently to sit on the Vatican's now-dissolved commission of Jewish and Christian historians that looked at the Church's position during Germany's Nazi period. There was also the matter of "the road not taken," he remarks in reference to his father having been a Toronto lawyer but his own departure from family tradition by pursuing a Ph.D. (at Berkeley) in order to become a professional historian. Altogether, as Marrus contemplated what he might do next as his deanship wound down, and administrative leave beckoned, he was determined to "strike off in a new direction." And so in September 2004, having changed from the requisite dean's attire of jacket and tie, to the student uniform of jeans and backpack (OK, the briefcase wasn't, in fact, jettisoned), Marrus slid into a seat in Professor Ernie Weinrib's first year Torts class, among others.

And just like any other first year student, Marrus wrote his outlines, read his cases, and took his exams, the latter being the most "uncomfortable and daunting" part of the entire experience. But studying the law proved irresistible. "Once I was into the courses," says Marrus with great animation, "they took command. The intellectual issues are powerful. It was a new way of thinking." The way of thinking may have been new, but he says with a chuckle, his own style didn't change much. "As usual, I couldn't keep my mouth shut. I asked a lot of questions." Later, I ask Ernie Weinrib for a comment on Marrus's penchant for voluble participation: "Whenever Michael participated in class discussion in Torts, it was evident that he both spoke and thought in completely formed paragraphs." That's

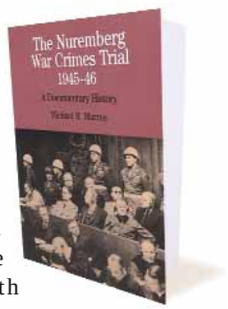
what a lifetime of teaching and writing history will do for a person, I guess.

But classroom eloquence is not the same thing as the daily reading load and grinding work of a law student. Marrus took his notes longhand rather than use a computer – an increasingly rare sight in many university classes – had a study partner, who, conveniently, was subletting an apartment in Marrus's house, and stored his collection of weighty text books in a basement locker at the law school. He also worked on his research project, a study of the fairly recent phenomenon of government apologies for historic wrongs against various peoples. But like any other student he did his homework religiously – it's a demanding cycle – but one that he found exhilarating, or, as he puts it: "fabulous," "great," and "terrific."

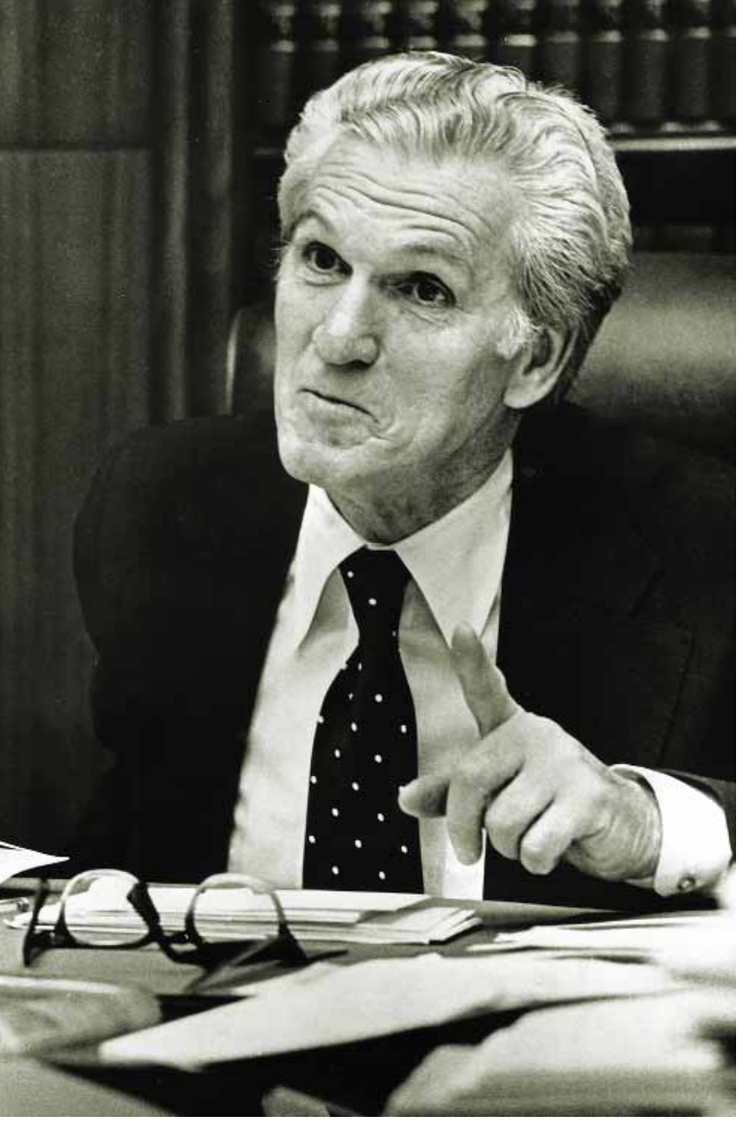
But studying the law proved irresistible. "Once I was into the courses," says Marrus with great animation, "they took command. The intellectual issues are powerful. It was a new way of thinking."

The particularity of Marrus's position as a former university dean going back to school is not likely to become common, but what is becoming a more common sight on post-secondary campuses across Canada is the older student who has decided to change gears mid-career, add something of value, or indeed to go in a different direction altogether. Part of this phenomenon is the changing nature of the contemporary career track, but even more important is the current demographic shift, as investigated by U of T economist and demographer, David Foot. For example, in Canada and elsewhere in the post-industrial world, this shift means an older workforce and a push to make retirement an elastic event. "Since completing the MSL program I have been approached by a number of people who are considering doing the same thing," says Marrus. And as Kaye Joachim, Assistant Dean of Graduate Studies at the law school, remarks, the law school is eagerly receptive to this new reality, especially as it affects scholars: "The MSL is a program designed for scholars who wish to acquire a knowledge of law in order to add a legal dimension to scholarship in their own discipline." To this end, Marrus's colleagues in the program were Michal Schwartz, a linguistics and literature professor from the Hebrew University in Jerusalem, who undertook the MSL in order to examine closely the relationship between ethics and law, and Dr. Cathy Popadiuk, a professor of medicine from Memorial University in St. John's, Newfoundland, who entered the program with a view to helping physicians respond better to the legal challenges facing their profession.

After Marrus's exciting year at Flavelle House and Falconer Hall, what comes next? In January, he'll commence teaching a course called "Great Trials in History" for U of T's history department in which he'll examine, among others, the Nuremberg Trials (about which he authored a book in 1997, *The Nuremberg War Crimes Trial 1945-46: A Documentary History)*, as well as the infamous Dreyfus Case, which exposed systemic anti-Semitism in late nineteenth and early twentieth century France. As well, his research into apologies continues, and he plans to be involved in some collaborative projects with faculty members at the law school. But don't expect him to be handling corporate mergers and acquisitions anytime soon, he laughs. Still, Michael Marrus's year long paper chase was well worth the effort. "I loved it!" he repeats. Yes, I think that message is unmistakable. ■



Brad Faught is a Toronto historian and writer.



The Hon. Bora Laskin

A Legendary Force at the University of Toronto

BY PROFESSOR MARTIN L. FRIEDLAND,
University Professor and Professor of Law Emeritus

This paper was presented at a Law Society of Upper Canada Symposium on May 25, 2005, commemorating the life and contributions of The Right Honourable Bora Laskin. It draws on the author's *The University of Toronto: A History* (Toronto: Osgoode Society and University of Toronto Press, 2002); Philip Girard, *Bora Laskin: Bringing Law to Life* (Toronto: University of Toronto Press, 2005); C. Ian Kyer and Jerome E. Bickenbach, *The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario 1923-1957* (Toronto: The Osgoode Society, 1987); and Irving Abella, *'The Making of a Chief Justice: Bora Laskin, The Early Years,'* (1990), 24 Law Society of Upper Canada Gazette 187.

Bora first entered the University of Toronto as a student in September 1930, graduating with a BA in law three years later. It was not a carefree time to go to university. A sacrifice had to be made by the family to send Laskin to Toronto because he entered the University the year after the stock market crash of 1929. Because of his marks at Fort William Collegiate Institute, he was able to enter directly into the second year of W.P.M. Kennedy's honour law course, an undergraduate program that Kennedy had started in 1927. In future years, all students would have to study for four years, rather than three, to get their degrees.

Laskin's undergraduate life at the U of T is well documented in Philip Girard's fine biography of Laskin, recently published by the Osgoode Society and the University of Toronto Press. As a Jew, Laskin automatically enrolled in University College – the non-denominational 'godless' college. He became involved in student politics, becoming the literary director of the University College Literary and Athletic Society, and was active in debating and sports, particularly track and field and rowing. He also joined a Jewish fraternity, Sigma Alpha Mu.

Bora had lectures from some of the leading figures of the period – in philosophy from George Brett, history from Frank Underhill, and political science from Alex Brady. The law side of the program was dominated by Kennedy, who, surprisingly, was not trained as a lawyer. He had come to the University as a professor of English literature, then switched to history, then to political science, and finally to law. He was an impressive scholar. By the end of the 1920s he had published 10 books. He was also a sparkling teacher. J.J. Robinette, one of Canada's greatest lawyers, who was taught by Kennedy in the 1920s, recalled that 'Kennedy was one of those brilliant Irishmen who could dazzle you…a performer as much as a teacher.'

The program attracted students who became leaders of the profession – Charles Dubin, William Howland, G. Arthur Martin, and Sydney Robins, to name only some students who later became members of the Ontario Court of Appeal. Perhaps their success was because they were inspired by Kennedy's view that legal education should 'create a body of citizens endowed with an insight into law as the basic social science, and capable of making those examinations into its workings as will redeem it from being a mere trade and technique and…make it the finest of all instruments in the service of mankind.'

Jacob Finkelman, a graduate of the honour law program and who had a special interest in labour law, had started teaching the year that Laskin arrived and no doubt influenced Laskin's lifelong interest in labour law. Finkelman, I should note, was the first Jew to be appointed to a full-time position at the University.

The Law Society of Upper Canada gave no credit for Kennedy's law course. Laskin therefore had to enroll in Osgoode's law program, which combined lectures and articling. Before he was permitted to enroll, however, he had to find someone who would give him employment and sign his articles. In his first

... he looked and acted like a wise Solomon-like figure, who the public could trust to deliver sound judgments under a new Charter of Rights and Freedoms.

year at Osgoode, he was 'employed' by his fraternity brother Samuel Gotfrid, who had received his call a year earlier, but could not offer his articling student very much work or remuneration. The following year, Laskin articled for a non-Jewish lawyer in the same building, who had a busy real estate practice, which no doubt accounts for Laskin's later interest in land law. He graduated near the top of his class at Osgoode, just as he had done in Kennedy's honour law program.

While at Osgoode, he obtained an MA in law from the U of T and after his call to the bar went to Harvard Law School on a scholarship where he came under the influence of some of the greatest names in academic law – Felix Frankfurter in administrative law, Roscoe Pound in jurisprudence, and Zechariah Chafee in equity. Two of the seventeen LLM students at Harvard that year received their degree *cum laude* – they were Bora and his best friend at Harvard, Albert Abel. Many years later, Bora persuaded Dean Caesar Wright to bring Abel to the U of T from the University of West Virginia. That was in 1955, the year that I entered first year law. Abel diligently and effectively taught legal writing and so one can add to Laskin's legacy Abel's important influence on legal scholarship in Canada.

Bora returned to Toronto, but could not find a job teaching or practicing law. In those years, there was, as was well known, a great divide between Jewish and non-Jewish lawyers and so practicing with an established non-Jewish firm was out of the question. He was also unsuccessful in obtaining satisfactory work with a Jewish firm and so did summaries of legal cases for the *Canadian Abridgment* – a job that paid twice as much as he later earned as an academic.

When Larry MacKenzie, who had been teaching at Kennedy's school, resigned in 1940 to become the president of the University of New Brunswick, Kennedy had the opportunity to hire a replacement. Kennedy was very fond of Laskin and Laskin was one of the two candidates he considered for the position. The other was J.K. Macalister, someone I had never heard of until I did research for my book on the history of the University of Toronto. Macalister had graduated from Kennedy's law course in 1937, with, according to Philip Girard, the highest marks ever recorded in Kennedy's program – an A in every subject in every year. He won a Rhodes scholarship to Oxford, where he obtained a first, and later topped the standings for the English bar exams.

In September 1940, MacKenzie's appointment at UNB became official and Kennedy could now offer an appointment. He offered it to Macalister, who had earlier expressed an interest in teaching at the U of T. Macalister cabled back immediately: 'IN ARMY SINCE YESTERDAY SORRY MANY THANKS – MACALISTER.' The appointment was then offered to Laskin. How much Laskin knew of the offer to Macalister is not known, but he would obviously have known that Macalister was a serious competitor for the position.

To complete the story, Macalister had joined the Canadian infantry, was later assigned to British intelligence, and along with another U of T graduate was parachuted behind enemy lines in France in June 1943 to act as a secret agent. They were captured, tortured, and executed at Buchenwald concentration camp in September 1944.

Laskin taught at the U of T until he left for Osgoode Hall Law School in 1945. My study of the evidence suggests that Laskin's move may have been part of a plan by Caesar Wright, then a professor at Osgoode Hall Law School, and his good friend, Sidney Smith, the new president of the University of Toronto, to have legal education in Ontario shift from the Law Society to the U of T. Smith wanted to establish at the University, in his words, 'a Law School that would rank first in Canada, and be among the leading schools of the North American continent.' He had already offered the deanship at the University to Caesar, but it had not been accepted at that time.

The plan was that Laskin would join Caesar at Osgoode and then at an appropriate time would move with Caesar and others to the University. It was thought necessary to convince Kennedy that the plan made sense. At that time, academics tended to spend most of the summer at their cottages. Laskin went to Wright's cottage in northern Ontario and then the two of them went to Kennedy's summer place north of Huntsville and west of Algonquin Park. The large property near Kearney, Ontario, that Kennedy called 'Narrow Waters,' had been purchased by Kennedy in 1940. In 1983, it was sold by Kennedy's son, Frere, to my wife and me, and so I have a particular interest in this story. Kennedy, Wright, and Laskin walked along a lakeside trail and Wright attempted to convince Kennedy of the wisdom of his plan. Kennedy grudgingly agreed and Laskin then left the University for Osgoode.

I should add that I keep that trail very well groomed and I'm considering putting up a small plaque saying that the plan to create the modern U of T Law School was in part consummated on this path.

In any event, as we know, and as Horace Krever, has told us from his personal perspective, Wright and Laskin, along with John Willis, found an opportune time to leave Osgoode and start a new three-year post-graduate law school at the University of Toronto, with Wright as dean. They had resigned from Osgoode because of the Law Society's reactionary proposal to increase the articling experience at the expense of the academic program. It was thought that the Law Society would quickly recognize the new program at the University, which had an outstanding faculty that also included Jim Milner and Wolfgang Friedmann. But the Law Society was reluctant to even discuss that possibility and grudgingly gave students credit for only two rather than three years. Students therefore had to spend an extra year at Osgoode after articling. This was not an incentive for attracting large numbers of applicants. Willis resigned, telling Wright that 'just two years after it start-

ed up as a professional school, the School of Law is to all intents and purposes dead.'

As previously stated, I entered first year law at the U of T in 1955, thinking, as did my classmates, who included such notable lawyers as Harry Arthurs, Jerry Grafstein, and John Sopinka, that we would later have to spend an extra year at Osgoode. As it turned out, on February 14, 1957, in our second year of law school, the Law Society recognized the U of T Law School as equal to its new Osgoode program – a wonderful Valentine's Day present to all of us.

We had Bora for three subjects, real property in first year, constitutional law in second year, and labour law in third. Today, most professors concentrate on one area of law, perhaps two. Laskin specialized in all three areas. Laskin's first year property course was the most technical course we had in law school. We learned in great detail such arcane subjects as future interests and shifting and springing uses. Although Laskin was more open to questions than Caesar, he always had a tremendous amount of material to cover and so lectured most of the time. He left the Socratic Method to Milner and Abel.

(Robert Lansdale Photography Ltd., University of Toronto Archives)

The Hon. Laskin congratulates a young John I. Laskin '69 at his graduation.

Although Laskin's door was always open and he would deal with whatever you wanted to discuss with him, he never had time for much chit-chat at the law school. Many of us went to see him about where we should article. We were in and out of his office in less than five minutes. He was a no-nonsense professor. When he happened to mention critically to our first year class something about the Queen's Counsel list that had been published that morning in the *Globe and Mail* and a voice in the back row shouted 'sour grapes', Laskin walked out, but soon came back. Nor was he amused in his upper year labour law class when someone had secretly brought in a record player and opened the class with Pete Seger's 'There once was a union maid.' Laskin did not want to be identified with one side in labour-management relations. He mellowed over the years, particularly after he became a judge. He was also more relaxed when not teaching or at his desk. I have it fixed in my mind that during my two years as a student at the law school's temporary quarters at the Glendon estate, he would sometimes walk with us down in the Don Valley forests between classes. It is possible, I admit, that those walks never actually took place. I am, however, sure that he and Peggy came to our wedding at the end of third year. In later years, like many others, I often turned to him for advice.

My wife and I happened to be having dinner with the Laskins at an Italian restaurant in London, England, in early July 1965 when Laskin was called to the telephone. He did not say anything about the call when he returned to the table, although it was clear to us that it had been an important conversation. We later found out that the call had been from the solicitor general, Larry Pennell, telling Laskin that the cabinet had appointed him to the Ontario Court of Appeal. Jerry Grafstein, who had close ties with the Liberal Party and had played an important role in the appointment, had tracked Laskin down at the restaurant. The announcement would not be made until the Laskins returned to Canada from their holiday towards the end of August and Laskin was asked to keep the appointment private. Laskin's acceptance was a great loss to the University because he was the clear choice to succeed Wright as dean.

As an academic, Bora had always been busy with outside assignments, giving opinions, conducting labour arbitrations, involved in faculty association matters, participating in civil liberties issues, and writing government reports. He also wrote headnotes for the *Dominion Law Reports*, the case law series edited by Caesar. I'm reasonably certain that his appointment to the Ontario Court of Appeal in 1965 allowed him to slow down a bit.

Perhaps his most important non-legal contribution to the University was chairing an influential committee, established in 1964, on graduate studies. The committee was composed of 12 persons, including Northrop Frye, John Polanyi, and Ernest Sirluck, the dean of the graduate school. President Claude Bissell later called it 'the strongest internal committee in the history of the University.' The committee's unanimous report was written by Laskin. The result was a centralization of graduate studies in the university. This was no surprise to his former students. It reflected his constitutional view that it was desirable to have a strong central presence. The University of Toronto's graduate school has been a major factor in the present high reputation of the University of Toronto.

Laskin continued his involvement in higher education after his appointment to the bench. He chaired the board of directors at the Ontario Institute for Studies in Education, which was established in 1966, and joined the board of York University in 1967.

Like Caesar, he produced important casebooks, and wrote a large number of articles and notes, particularly for the *Canadian Bar Review*, but, as with Caesar, he never produced a major text in any of his fields of expertise. Moreover, he died just prior to the development of Charter jurisprudence by the Supreme Court of Canada, so his judgments are not as frequently cited today as they otherwise would have been. Nevertheless, I believe that his approach to adjudication influenced other members of the court, particularly Brian Dickson, in their readiness to give a broad interpretation to the Charter. He also indirectly influenced the enactment of the Charter. This was not because he was active behind the scenes, but because he looked and acted like a wise Solomon-like figure, who the public could trust to deliver sound judgments under a new Charter of Rights and Freedoms.

He was a powerful force in the law and in higher education and an inspiration to his students, fellow judges, and law clerks, many of whom are gathered here today. He was a great Canadian. ■

Gifts to the Law School

The Martin Teplitsky Bursary

Friends, clients and associates of Martin Teplitsky '64 wanted to do something to acknowledge his lifelong commitment to the legal profession, and his dedication to important community and social issues. Together, Teplitsky's many supporters raised more than $200,000 to establish a student aid endowment at the Law School. With university matching funds, the endowment of $400,000 will support an annual bursary commencing in January 2006 to be awarded to a deserving student in any year of the JD program on the basis of financial need.

In 1998, Mr. Teplitsky was preparing hot meals for Toronto's homeless at the *St. Andrew's Church Out of the Cold* program when the idea struck him that the legal profession should also get involved in this worthy cause. Drawing on the support of legal practitioners, and with the help of many enthusiastic volunteers, Mr. Teplitsky launched *Lawyers Feed The Hungry Program Toronto* at Osgoode Hall. Today, the program serves between 1,000 and 1,200 meals, three days a week. Endorsed by the Law Society of Upper Canada, the program runs with no government or LSUC money, no institutional structure and no formal fundraising. Mr. Teplitsky pays most of the operating costs himself, and is reimbursed through donations made by lawyers, their firms and the public.

A senior partner at Teplitsky Colson Barristers, and a supporter of innovative community justice and outreach initiatives, Mr. Teplitsky focuses on counsel work before the courts and administrative tribunals. Earning a reputation as one of the country's best mediator-arbitrators, he has been instrumental in settling various provincial disputes including teacher and health care worker job actions. In addition to his legal and community advocacy, he is also the author of *Making a Deal: The Art of Negotiation*, as well as numerous academic journal articles on tort law, arbitration and mediation.

Since his graduation from the Faculty of Law in 1964, Mr. Teplitsky has shown an unwavering commitment to the Faculty. Two of the many bursaries he has established at the law school include *The Jack & Ida Teplitsky Memorial Bursary* in memory of his parents, and the *Teplitsky Colson Entrance Scholarship*. In the spring of 2005, he gave generously to fund a groundbreaking collaboration between the law school and the Toronto District School Board. *Law in Action Within Schools* (LAWS) is the country's first law-and-justice-themed high school program, and it would not have been possible without the support of Mr. Teplitsky. ■

The Owen Shime Bursary

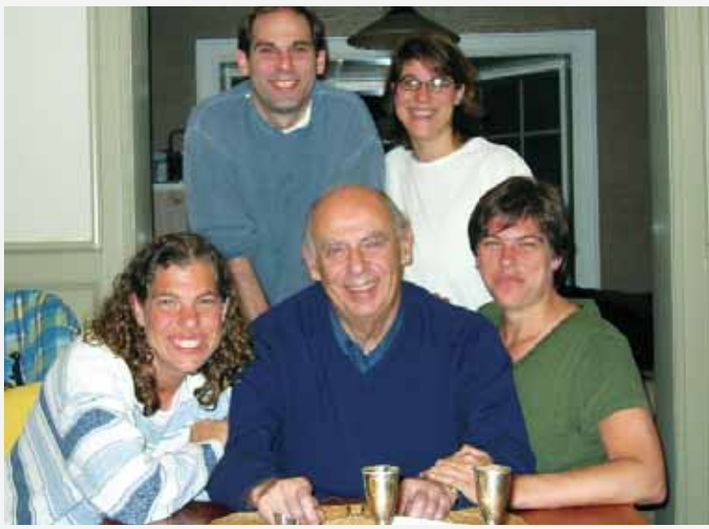
To celebrate and honour a very special alumnus who has made it a lifelong career goal to champion and support equal access to legal education, *the Owen B. Shime Bursary* has been established at the University of Toronto, Faculty of Law.

Forty-five years ago, Owen Shime, Q.C. graduated from the U of T, Faculty of Law as the first in his family to attend university. Leading up to Mr. Shime's 70th birthday in September, his children Pamela, Sandra, Debra and Jonathan, decided to commemorate his extraordinary professional accomplishments in labour arbitration and mediation as well as his passion for education and social justice.

The four children generously donated $200,000 to this very special bursary in honour of their father, and with matching funds from the University were able to establish a $400,000 endowment in support of student aid. The endowment will provide an annual bursary to support the legal education of a qualified and deserving student entering the first year of the J.D. program under the Faculty's Financial Aid Program.

Shime's daughter, Sandra, says it made sense for the gift to benefit young adults who dream of going to law school, just like Mr. Shime did in 1958. "My father has enormous integrity and passion for the law," she says. "He has always felt grateful for the legal education he got at U of T, so now someone else can have that same advantage."

In 1982, Mr. Shime's wife Millie passed away, leaving him with four teenage children to raise. His three daughters and son created this gift in part to honour his incredible achievements as a father in an enormously challenging situation. Mr. Shime managed to make his young family a priority while continuing to realize great success professionally. One of his daughters went on to obtain a graduate degree in social work, while the other two daughters and son chose to follow their father into law. Indeed the law school is fortunate to have one of his daughters, Pamela, a 1995 graduate of the U of T, Faculty of Law, serving as National Director of Pro Bono Students Canada housed at the law school.



(L-R): In front, Pam, Owen, and Debra, and in the back, Jonathan and Sandra

"Owen is a respected lawyer and labour arbitrator with a passion for social justice and fairness," says Professor Brian Langille. "The fact that he, as an alumnus, is involved in helping students come to this law school only adds to the stature of this incredible gift."

In a career that spanned 40 years, Mr. Shime has become one of the most cited arbitrators in labour law. After seven years practicing civil and criminal litigation, he carved out a niche as a labour arbitrator and mediator, and became a pioneer in alternative dispute resolution in Canada. For eleven years, Mr. Shime served as Chair of the Ontario Public Service Labour Relations Tribunal, and he was Chair of the Ontario Crown Employees Grievance Settlement Board for 14 years. In between, he taught labour law at two law schools including U of T. In 1973, he established his own labour arbitration practice, Arb-Med Limited, in Toronto. In 2000, Mr. Shime was awarded a *Law Society of Upper Canada Medal* for his impact on the profession.

The bursary, which will first be awarded September 2006, is a wonderful tribute to a man who has made and continues to make an enormous difference to the legal profession. ■

The Ron Daniels and Joanne Rosen Student Bursary

When the announcement was made that Ron Daniels would be stepping down after a decade as Dean of the U of T, Faculty of Law, the response from faculty and staff at the Law School was overwhelming. In April 2005, Daniels was named the 28th Provost of the University of Pennsylvania. He officially took up his post in July 2005.

One of the many young and exceptionally talented scholars hired by Ron in the last ten years, Professor Ed Iacobucci, does not mince words when it comes to his admiration for Ron. "He has made an indelible mark on the law school and its programs, and we wanted to do something that would reflect his contributions and values." Colleagues and staff at the Faculty were quick to agree. Indeed, upon hearing the news of Daniels' departure, a large part of the faculty and staff gave an immediate and unequivocal "yes" when asked to contribute to a bursary honouring him and his partner, Joanne Rosen, also a graduate of the law school. "The response was unprecedented," says close friend and colleague Professor Michael Trebilcock. "Ron captured people's imaginations and helped many of us achieve our own dreams and aspirations. He made anything seem possible."

A remarkable $300,000 with University matching was raised from faculty and staff to establish the *Ron Daniels and Joanne Rosen Bursary* in support of student financial aid. The announcement of the special bursary came at a farewell dinner held at the law school this past June. On Saturday June 18th, friends and colleagues joined in a celebration of community spirit. "There was a tremendous outpouring of support and affection," said staff member Aladdin Mohaghegh. "There was also a lot of fun and laughter."

(L-R): Drew, Ron, Ally, Ryan, Robbie and Joanne

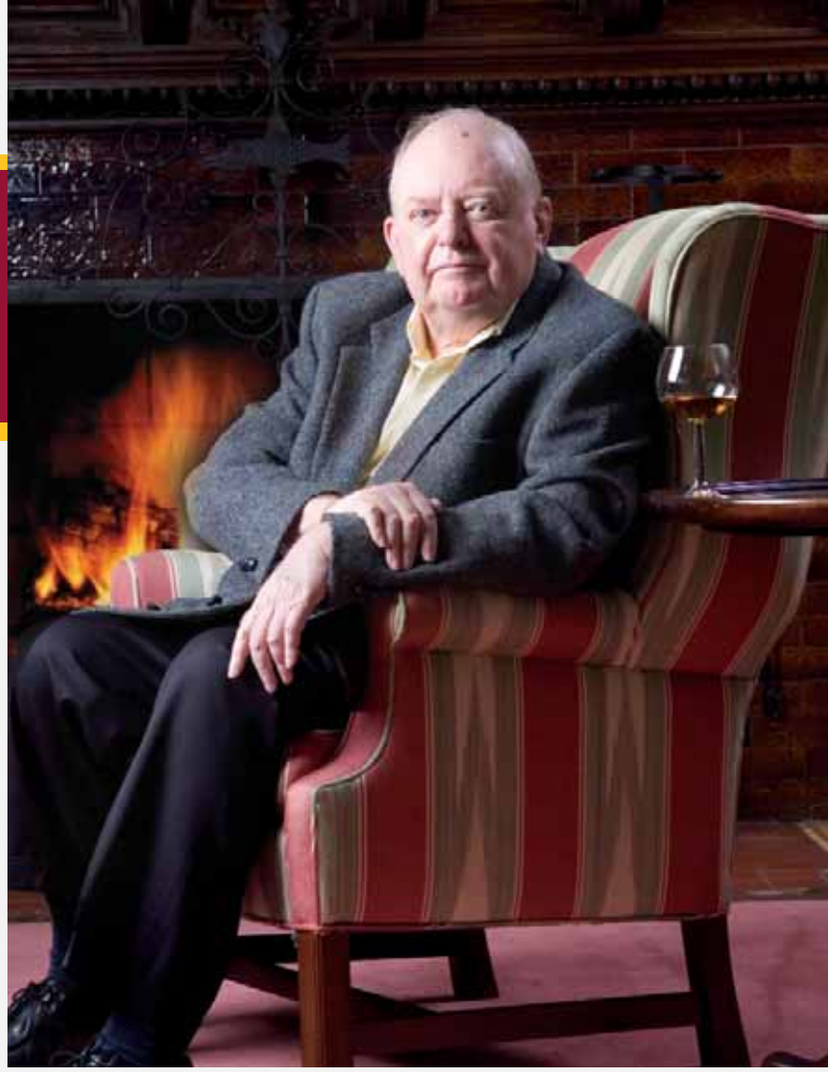
A former lawyer with the Ontario Human Rights Commission, Joanne was an important influence and presence at the Faculty, volunteering her time whenever needed, and often juggling the needs of their four young children with the hectic pace and demands of the school. Even the children, Robbi, Ally, Drew and Ryan, came to be considered honorary members of the law school, participating in everything from faculty dinners and annual student BBQ's, to almost weekly special events hosted at the Daniels/Rosen home. Their absence at the Faculty will be sorely felt. ■

Group of Gold Line Supports International Human Rights Internships

Troubled by the millions of people around the world who do not have ready access to higher education, a small family-run company in Richmond Hill has established a bursary at the U of T Law School. The Group of Gold Line (GGL) has donated $25,000 to the Faculty to establish the *Group of Gold Line International Human Rights Internships,* which will allow law students to work on human rights issues in foreign countries over the summer. Beginning in January 2006, one or two students each year will be awarded $2,500 to $7,500 to work on human rights issues abroad. The husband and wife team who founded GGL say they would like to help students in countries where access to education is not considered a basic human right, including Iran, where they believe the Baha'i community is being denied access to government-run universities and colleges. Neda Moeini and her husband heard about the U of T Faculty of Law's International Human Rights Program (IHRP) through some friends. After meeting with the Director, Noah Novogrodsky, they chose the IHRP to administer the bursary as part of the law school's annual summer internship program over the next five years. "My husband and I feel that we may be able to play a small role and be of some assistance in bringing hope to innocent people who have fallen prey to these injustices," says Moeini, Executive Vice President of GGL. This summer, the IHRP sent 20 faculty-funded interns to human rights organizations in 15 countries around the world. In addition, seven students participated in firm-funded human rights internships where they divided their summer between work at leading law firms and at human rights organizations.

"Our goal is to educate law students to make a difference on the world stage," says Novogrodsky. "It's wonderful that a company with global reach like Gold Line is supporting our annual internship program." Group of Gold Line, the largest prepaid long distance service provider in Canada, services over 60 per cent of the industry, providing newcomers to Canada with a way to keep in touch with friends and relatives in their home countries. For more information, please visit www.goldline.net. ■

A Fireside Chat with Ralph Scane



When Kate Hilton, the Faculty's Assistant Dean, Alumni and Development, asked me to write this note to alumnae and alumni, I wondered, "Why me?". She had the entire distinguished current faculty to put the arm on, without scraping the moss off a not so recent retiree. The subject she assigned was "wills (gifts by)," and I realized that, for about three and a half decades of graduates, if they thought of the subject of wills in connection with their law school experience at all (unlikely), I was one of two members of the full-time faculty they were likely to associate with it. Indeed, for much of the latter portion of that period, after Ted Alexander transferred to the exotica of Constitutional Law, I was the only one.

To plead for any form of charitable assistance these days is to risk achieving the popularity rating of a dinner-time telemarketer. Nevertheless, the needs of universities for assistance from the private sector, if they are to be met at all, cannot expect to be met by other than the graduates of universities, who have most directly benefited, economically and otherwise, from the existence of those institutions. To compare the endowments and annual sustaining donations of the major private universities in the U.S.A., with whom at least this University, and this Faculty seek to compete in teaching and research, is to some extent to compare apples to oranges, as the funding traditions are so different. Nevertheless, we trail far behind them. For universities in this country, or at least this province, government grants and fees will supply the bread and butter for the foreseeable future. But it also seems clear that if there is to be any jam on the bread, that must come from the private sector. Our profession has responded generously indeed in answering pleas from law faculties, including this one, for major assistance with bricks and mortar. However ungrateful we may seem in the face of that generosity, we must still keep asking for help in enriching what takes place within the buildings. The bread and butter will enable the Faculty to turn out reasonably competent lawyers, but the "edge" they hope to give their students, in these days when faculty must run as hard as they can to keep the curriculum current with new challenges to which lawyers are being called upon to respond, requires a lot of jam as well.

Many graduates must feel that, throughout much of their careers, they cannot afford large amounts of giving for sustaining the Faculty's programs, in the face of other demands upon their incomes. But some will attain sufficient economic success that they can be satisfied that those for whom they wish to provide after their deaths will be adequately provided for, and that there will still be something left over to try to better the society in which their descendents will live. I hope that you will believe that a final gift designed to assist the maintenance and betterment of a profession of which we have been proud to be members is an attractive means of achieving that aim. A gift in your will to the Faculty is an excellent way of contributing to the existence of a future bar that will be more than competent to meet the demands the world will surely place upon it. If you would like to know more about making a bequest to the Law School, please call Kate Hilton at 416-978-2621 or e-mail her at k.hilton@utoronto.ca. ■

last word

PROFESSOR JANICE GROSS STEIN

Janice Gross Stein is Belzberg Professor of Conflict Management in the Department of Political Science and the Director of the Munk Centre for International Studies at the University of Toronto. She is a Fellow of the Royal Society of Canada and the author of over 100 books and articles. She currently serves as Vice-Chair of the Education Advisory Board to the Minister of Defence, as a member of the Board of Royal Military College, and as a member of the Board of CARE Canada. Professor Stein was the Massey Lecturer in 2001. She is a Trudeau Fellow and was awarded the *Molson Prize* by the Canada Council for an outstanding contribution by a social scientist to public debate. She was recently elected as an Honorary Foreign Member to the American Academy of Arts and Science.

In the last several months young people bombed the subways of London and set the suburbs of French cities on fire. In Europe, it is not "they" that are burning cars, buses, and schools, but "we" who are doing this to "ourselves." It was British citizens, born in England, who firebombed the subways and the buses. It was French citizens, the children of immigrants, born in France, who set cars and schools in their own communities across the country ablaze. Terror and violence were not bred over there, but at home. In a deep sense, "they" are "us" and "we" are "they."

England prides itself on being a diverse, multi-ethnic community, open to different religious and cultural traditions. Yet it seems that the sense of shared community was not woven closely enough to overcome the anger against what their government was doing abroad. A closer look explains why the shared sense of community was not resilient enough: in Britain, communities often live apart; at best, they live side by side, rarely meeting one another. When one community becomes a semi-permanent underclass, its young men are recruits waiting to commit acts of violence.

The official rhetoric in France could not be more different, 'We are all one', French leaders insist, irrespective of religion or race. No *hijabs* or crosses in public schools, *s'il vous plait*. Yet young Frenchmen living in squalid suburbs tell a very different story. We may be French citizens, they insist, but we are not given the same opportunities as those who have lived in France for generations. If our family name is African, or we are recognizably Muslim, we don't get the job. We are not enrolled in universities. Those young people setting cars on fire are not demonstrating against French foreign policy in the Middle East or insisting on the right to recognition of their cultural or religious differences. On the contrary, they want the same opportunities given to other young Frenchmen. They want to be French not only in name but in experience.

What do the different stories about London and Paris tell us? It seems that neither the rhetoric of multiculturalism nor of unicultural secularism is violence proof against unemployment, dreariness and neighbourhood walls. Although our multiculturalism in Canada is much deeper than in Britain or France, we can ill afford to be smug and self-righteous. It is not difficult to imagine an underclass a few kilometres away, around the corner, in our biggest cities.

What can we in Canada learn from the violence of the last six months in Europe's capitals? We celebrate our diversity, our knowledge of different cultures and histories, our taste for all kinds of cuisines. This kind of shallow multiculturalism is no longer enough, if it ever was. With luck, it has taken us this far in building Canadian society but it cannot take us much further. Young people who retain their cultural heritage but cannot find jobs, a career, a place to live, a future, and an experience of fairness will become angry and, sooner or later, violent. London and Paris have shown us two fundamental challenges.

Although our multiculturalism in Canada is much deeper than in Britain or France, we can ill afford to be smug and self-righteous. It is not difficult to imagine an underclass a few kilometres away, around the corner, in our biggest cities.

We will need to watch carefully that we fulfill our promises, that multiculturalism does not remain rhetoric with which we cover deepening socio-economic differences. We will also need to watch carefully that our commitment to multiculturalism does not paralyze our capacity to make judgments. We must be much clearer about our values, about what our societies permit and what we exclude as unacceptable. We are moving beyond food and film in our national discussion of multiculturalism to speak plainly about the values we share as citizens and what we collectively reject as a betrayal of our values.

The Faculty of Law, under Dean Ron Daniels, put the academic resources in place to inform this very important conversation. Dean Daniels led in the creation of a national *pro bono* program matching law students to community organizations across Canada. The Faculty is a leader in the law on human rights, both locally and globally. The International Human Rights Clinic at the Faculty of Law has an international focus, but its works spill locally into our conversation in Canada. Dean Daniels also led in the creation of the program on law and poverty, a program that speaks to the most basic challenges of the mosaics in our cities. It is all too rare that a Faculty of Law broadens its vision, engages with the communities it serves, and leads both by the quality of its scholarship, the breadth of its vision, and the depth of its commitment. We are fortunate to have this kind of Faculty as we struggle in Canada to become more like we imagine ourselves and less like London and Paris. ■

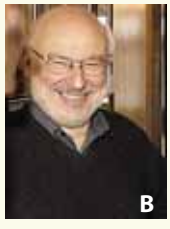
SUN	MON	TUE	WED	THURS	FRI	SAT
JANUARY 2006				**Jan. 12, 2006** **Law, Religion and Interpretation** The third session of a new series created by the Faculty of Law. (7:00 p.m. to 9:00 p.m.)		
		Jan. 17, 2006 **The 2006 David B. Goodman Lecture** **The South African Constitutional Court: Its First Ten Years** Justice Richard J. Goldstone, Henry Shattuck Visiting Professor of Law, Harvard Law School (5:00 p.m. to 7:00 pm)		**Jan. 26, 2006** **Literature Through the Lens of Law** Bernhard Schlink, Visiting professor and author, Humboldt-Universitaet zu Berlin, Germany will read from his own book, *The Reader.* (7:00 p.m. to 9:00 p.m.)		
FEBRUARY 2006				**Feb. 2, 2006** **Distinguished Alumnus Award Dinner** Honoree: The Hon. Mr. Justice Jack Major		
		Feb. 16, 2006 **Literature Through the Lens of Law** Judith McCormack, author and Executive Director of Downtown Legal Services, will read from *The God of Small Things* by Arundhati Roy (7:00 p.m. to 9:00 p.m.)				
MARCH 2006						**Mar. 10, 2006** **Colloquium on Professionalism and Culture** U of T Professors Brenda Cossman, Ed Morgan and Angela Fernandez, and Justice John Laskin of the Ontario Court of Appeal
			Mar. 22, 2006 **Literature Through the Lens of Law** Professor Ed Morgan will read from *The Apprenticeship of Duddy Kravitz* by Mordecai Richler (7:00 p.m. to 9:00 p.m.)			

HOW WELL DO YOU KNOW OUR FACULTY?

Test your memory of the law school. Send us your answers to the following three questions and you could win a law school sweatshirt.

1. Which faculty member has a 14-year old son who is a dead ringer for his scholarly dad?

A. Kent Roach
B. Arnold Weinrib
C. Hamish Stewart



2. Which faculty member wrote comedy sketches for the late 1960's TV comedy series *"The Hart & Lorne Terrific Hour"?* The show, which featured Lorne Michaels (creator of *Saturday Night Live)* and Hart Pomerantz (a 1965 U of T Law grad) helped this faculty member to make some extra money while studying for his M. A.

A. Alan Brudner
B. David Beatty
C. Michael Trebilcock

3. Which faculty member is pictured in this photo at age one?

A. Jutta Brunnée
B. Carol Rogerson
C. Denise Réaume

Send your answers to Kathleen O'Brien at kathleen.obrien@utoronto.ca

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