UNIVERSITY OF TORONTO FACULTY OF LAW

nexus

FALL/WINTER 2002

THE FUTURE OF HEALTH CARE

JACK BATTEN RETURNS TO LAW SCHOOL

GREAT PERFORMANCES: PROFESSOR RALPH SCANE

NEWS AROUND THE LAW SCHOOL

NEW PUBLICATIONS

HONOURABLE PAUL MARTIN

UNIVERSITY OF TORONTO FACULTY OF LAW

UNIVERSITY OF TORONTO
FACULTY OF LAW

When asked to explain why we chose the  Faculty of Law,  University of Toronto, we - the faculty, students and alumni,  answered with surprisingly unified expressions. We came to this law school, we said, because it represents excellence in people  and academic standards.

Intellectual pluralism and interdisciplinary scholarship are at the core of our faculty and our programs.

Toronto offers us the ethos of a  thriving business community combined with a strong public interest sector. We enjoy the wide avenues of Toronto's urban core nicely  contrasted with the many diverse neighborhoods. Students, faculty and alumni strongly identify the façade of

 Flavelle House with their school. Our new logo personifies our rich history and the values that define us. The pillars represented in the logo are indicative of "pillars of society" – Faculty of Law graduates – the great legal minds who go on to be leaders in thought, word, and deed.

Message From the Dean

As you know, over the last several years, the Faculty has appointed 26 new colleagues (more than half our current faculty complement) and has undergone a significant transformation. The addition of these colleagues has not only allowed the Faculty to achieve unparalleled opportunities for faculty-student intellectual engagement, but has also enabled the Faculty to offer a host of new courses and perspectives on law in areas of mounting interest to the legal profession and the world beyond. In this way, we are better equipping students, upon graduation, to contribute to the humane development of law and policy.

In the case of health law and policy, the impact of faculty recruitment has been particularly arresting. Under the leadership of Bernard Dickens — Canada's preeminent expert in medical jurisprudence — the Faculty had long claimed a vanguard role in public policy debates surrounding the law and ethics of a range of medical practices — abortion, organ sales, the right to die, forced sterilization of the mentally disabled, and consent in human medical experimentation. Bernard's scholarship (more than 300 separate articles) has been distinguished by his capacity to cut to the core of complex, technical issues, and to discern the legal and ethical issues lying at their heart.

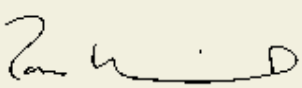
In 1987, the Faculty's expertise in medical jurisprudence was enriched by the addition of Rebecca Cook. Rebecca's work is focused on women's health issues, and has explored such issues as women's reproductive rights, genital mutilation, and protection from sexually transmitted disease. In this respect, Rebecca was the first of our colleagues to focus on the multi-dimensional problems of the developing world, and she has been a central contributor to law reform initiatives that have sought to improve dramatically the scope for freedom and health enjoyed by Southern women.

With this core of scholars in place, the Faculty has made three recent appointments — Colleen Flood, Trudo Lemmens, and Sujit Choudhry — that have contributed both depth and breadth to our existing expertise.

Colleen Flood's work evaluates the strengths and frailties of different national health care delivery systems from legal, economic and political science perspectives. As such, Colleen is able to offer insights for Canadian public policy reform that are grounded in the actual practices and institutions of other countries. Trudo Lemmens' research is distinguished by his rigorous examination of a range of issues lying on the frontiers of biomedical research. Over the last several years, Trudo has written incisive works on genetic testing, the human genome, and human experimentation. Finally, Sujit Choudhry's work on the constitutional and public policy dimensions of health care delivery systems adds an important perspective on the legal constraints facing health care reform in Canada.

As this issue of the Nexus demonstrates, our fortune in being able to recruit such an outstanding group of scholars and teachers having expertise in the health law and policy area means that the Law School will stand as an important forum for debate and deliberation on the future of health care reform in this country and the world beyond.

This is particularly significant given the reality of an aging population, the growth in new, complex and expensive medical technologies, mounting citizen frustration with current delivery models, and our country's fundamental commitment to accessible health care. How the efficiency and equity imperatives involved in health care reform are reconciled stands as one of Canada's great contemporary public policy challenges. As the work of this group demonstrates, in seeking to address these national challenges we must enlist ideas and experiences drawn from the international arena. In this manner, the Faculty of Law will continue to stand as an intellectual community that seeks to interpret the world to Canada and Canada to the world.



Ronald J. Daniels '86

UNIVERSITY OF TORONTO
FACULTY OF LAW

PAGE 18

ON THE COVER

Allan E. Gross is Chief of the Division of Orthopaedic Surgery at Mount Sinai Hospital, and a full professor of the Department of Surgery at the University of Toronto. He holds the Bernard Ghert Chair in Lower Extremity Reconstructive Surgery. Dr. Gross had published 3 books, 40 chapters and 126 articles of which most are related to bone and cartilage transplantation and revision arthroplasty of the hip. He was an ABC Travelling Fellow in 1977, and is presently a member of the COA, AOA, and the Hip Society.

features

nexus

FALL/WINTER 2002

Departments

Special Report: Events

Special Report: People

Last Word

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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We invite your letters, submissions, news, comments and address changes.

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From the Editor

Jane Kidner, Assistant Dean, External Relations

The last issue of Nexus, published just six months ago, was robust to say the least - a full 130 pages of news, chronicling more than a year of memorable moments and activities at the Faculty of Law, University of Toronto.

This issue, although significantly shorter, is no less weighty. As well as the regular departments, it includes three very special and noteworthy feature articles. First, a feature written by five of our health law scholars, Colleen Flood, Sujit Choudhry, Trudo Lemmens, Rebecca Cook and Bernard Dickens, highlights some of the most important health law and policy issues facing Canada and other societies around the world today. On a lighter note, a second feature article written by well known Canadian author and journalist Jack Batten chronicles his day-long return to the law school to recapture his early days as a law student from 1954 to 1957, and contrast his encounter with his experience over 45 years ago. A third feature article profiles the prolific career of one of the Faculty's most beloved teachers – Professor Ralph Scane.

This issue also reports on three new faculty stars who joined the law school in September of this year – Professors Doug Harris '92, Darlene Johnston '86, and Jean-Francois Gaudreault-Desbiens – as well as several alumni who have distinguished themselves in the legal community.

If you have not been able to join us at the Faculty over the past several months for the multitude of public lectures and conferences that take place weekly, I hope you will find time to flip through the "Events" section to get a sense of the breadth of legal and policy issues debated, analyzed and discussed each week in Falconer Hall and Flavelle House.

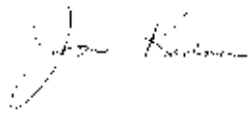
And if you were otherwise occupied on the evening of November 21st, you won't want to miss pages 51 to 53, to find out more about a most memorable visit to the law school by the Honorable Paul Martin '64, Member of Parliament and former Minister of Finance.

Another noteworthy item is the law school's new website at www.law.utoronto.ca . Nearly a year in the making, it was launched on September 1, 2002.

On our site you will find comprehensive information organized according to user groups – students, faculty, alumni, and prospective students. There is also a section for quick visitors to the site. These "portals" provide everything you might want to know about the law school, in an easy-to-use format that is responsive to the needs of users. Useful features include an extensive calendar of upcoming events, recent press coverage of faculty scholarship and alumni achievements, important and timely faculty publications which can be easily downloaded, and weekly stories of news around the law school.

We hope you will visit our new web site often – and find it helpful. Please do not hesitate to contact us if you have comments about the site that you would like to share with us. Send an e-mail to law.website@utoronto.ca.

I hope you enjoy this issue – happy reading and happy holidays!



Jane Kidner '92 ■ j.kidner@utoronto.ca
Editor

www.law.utoronto.ca

Contributors

When **Jack Batten,** class of '57, returned to law school for the day, he was amazed at the changes and new opportunities that have opened up since his student days—and at how certain things, happily, remain the same ("Back to the Future," p. 6). Batten, who practised law for four years prior to his illustrious career as author of numerous books and articles, says: "I found the whole experience fascinating, and enlightening in the extreme." Batten has written 29 books, six of them about Canadian lawyers, judges and court cases, and one about the U of T law school Class of '75.

The Honourable Tony Clement, class of '86, gives his perspective on the value of his law degree, the role of health law scholarship as a basis for good public policy, and the future of health care ("Last Word," p. 60). Minister Clement is Ontario's Minister of Health and Long Term Care, and Member of Provincial Parliament for Brampton West - Mississauga. His key priorities as Minister are to oversee the province's hospitals, long-term care facilities, the Ontario Health Insurance Plan, community care access centres, public health and emergency health services. Minister Clement was called to the Ontario Bar in 1988, and has held many portfolios in the Ontario government.

In "The Future of Health Care," (p. 18), the Faculty of Law's Health Law and Policy group – **Professors Sujit Choudhry, Rebecca J. Cook, Bernard Dickens, Colleen Flood and Trudo Lemmens** – offer timely perspectives on a range of contemporary health law issues. Their essays explore health care reform; regulating the use of human beings in research; the criminalization of sex selection in Canada; and the issue of safe motherhood.

(l to r): Professors Trudo Lemmens, Bernard Dickens, Rebecca J. Cook, Colleen Flood, and Sujit Choudhry

Toronto writer **Kirsteen MacLeod** discovers the secret of a legendary law teacher's star power ("Professor Scane Lights Up the Law School Stage", p. 47), and explores the activities of the Faculty's innovative Health Law and Policy Group ("The Health Law and Policy Group: Meeting Emerging Challenges in Health," p. 32). MacLeod's work has appeared in many Canadian magazines and newspapers over the past 15 years.

Joseph Kim is the Faculty of Law's communications officer, and Managing Editor of Nexus. An experienced reporter and writer, Joe worked for several weekly and daily publications in Ontario before joining the Faculty of Law in December 2001.

Joanna Erdman '04, is currently a second year law student at the University of Toronto. Prior to attending law school, she obtained a B.A. with high distinction majoring in English. In addition to writing for Nexus, Joanna is a junior editor with the Law Review and a member of the Moot Court Committee. Last year, she received the Laskin Prize for Constitutional Law.

Henry Feather is a contributing photographer, and since 1981 has photographed people. The resulting portraits are expressive windows into the character of his subjects. He researches his subjects and works with them until that certain "something" is revealed. In this issue Henry captures the images of the Honourable Paul Martin '64, Jack Batten '57, and our Health Law and Policy scholars.

"By the end of my day at the law school, after the hours of classrooms and conversations, when I take the subway home, the small ache in my forehead has been replaced by something else. I recognize the new feeling. It's enlightenment."

BACK TO THE FUTURE

By Jack Batten ('57)

It is 3:40 on a recent autumn afternoon, and I'm sitting in Ernie Weinrib's first-year Torts lecture. I begin to feel a small ache in the centre of my forehead. It isn't the pain of excess or fatigue or injury. It's the pain of concentration.

Weinrib is analyzing Palsgraf v Long Island Railroad, and he says to his students, "Your whole future as lawyers depends on this case." I think he's kidding. He's using the exaggerated assessment to draw the class into opinions about Justice Cardozo's judgment in the case. I'm a member of the class, at least for this one afternoon, and I think hard about Palsgraf v Long Island Railroad. I concentrate, and I feel the prick of pain in my forehead that seems anciently familiar.

It's a Proustian moment. I realize that I first experienced the pain forty-eight years earlier in the autumn of 1954 when Cecil Augustus 'Caesar' Wright, the founder and first dean of the modern law school, delivered his lectures on Torts to us first-year students in the class of '57. Dean Wright never suggested that our futures hung on a particular case, and his lectures in Torts differed from Ernie Weinrib's in matters of content. Wright's approach was doctrinal. He gave us the pure doctrine of Torts. Weinrib's lecture and his students' responses enhance the doctrine with issues of economics and philosophy. But, as Wright was, Weinrib is rigorous and illuminating. Like Wright, he coaxes and cajoles, and he facilitates thought. I'm getting the old headache. Some things about law school never change.

The idea is that, for an article in Nexus, I visit the school for a day, sit in on lectures, talk to students, interview faculty members, then contrast what I discover with recollections of the school in its early years. First thing in the morning of the day of my visit, Dean Ron tells me, "You'll find it fun and invigorating." Easy for him to say.

It happens that Ron has just returned from 10 days in Argentina. He lectured on Law and Economics of the Corporation at the law school of a university in Buenos Aires named Di Tella University. Ron discovered that the Di Tella Law School is embattled, unable to obtain official recognition from Argentina's professional regulators. This rang bells for someone like Ron from the University of Toronto Law School where Caesar Wright fought for most of a decade before he gained sanction for the school from the Law Society of Upper Canada. At Ron's last dinner with the Di Tella law faculty, he told them of his own school's history. "If you persevere," he said to his hosts, "you can change the character of legal education in Argentina the way Caesar Wright and his colleagues did in Canada."

We students who were the beginning members of the class of '57, 76 of us, entered the school at a time when Wright was just half way through his struggle with the Law Society. He ran a tight ship at the school. "Look to your right, look to your left. One of you will soon be gone." I don't recall whether Wright actually spoke those words, but the threat was in the air. My very bright friend from undergraduate days, Bernie Chernos, sat on my right. I knew he wasn't going anywhere (I was right: Bernie graduated at the top of the class of '57). I didn't know the person on my left, a gangly guy whose knees jiggled non-stop. The knee-jiggler vanished within a month.

By January of first year, dozens of our fellow students had similarly passed silently from the school. Wright, Bora Laskin and the other members of the small faculty had sized up the class during the autumn lectures and at the Christmas exams, and found more than half of our number wanting. Wright took aside those deemed not up to scratch and firmly suggested they look elsewhere for careers. The class was reduced to a mere 32 students. Thirty-one men, one woman, all of us white.

At graduation, I stood twenty-fourth out of the thirty-two. This undistinguished rank put me behind the classmate whose career took him highest in the law, straight up to the Supreme Court of Canada (Jack Major), but ahead of the classmate who, of all of us, generated by far the most headlines (Alan Eagleson). I practised law for four years, then abandoned it in favour of a lifetime of writing books and magazine articles. But I recognized that my life and work would always be touched by the intellectual example of such giants among teachers as Wright, Laskin, James Milner and Albert Abel.

The first stop on my visit to the school is Professor Abraham Drassinower's nine o'clock seminar in first-year Property.

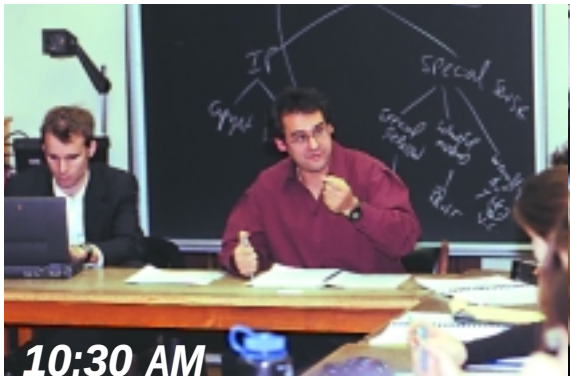
I have already learned from Ron Daniels that first year has 170 students. Fifty-four percent are women. Almost a third are visible minorities. The total of 510 students in all three years are taught by a faculty of more than 50 men and women. None of the 170 first year students need to worry about Dean Daniels taking them aside for a chat of dismissal. With the high quality of their undergraduate degrees, their superior scores on the LSATs (which didn't exist in the 1950s) and in other ways, they have already established that they possess the brains, ambition and fortitude to deserve a place in the school. They're in law for the long haul.

Abraham Drassinower looks like someone from a Bertrand Tavernier movie, the handsome, tousled sidekick to the Philippe Noiret character. Sixteen students, evenly divided by sex, sit at a rectangular arrangement of tables in a room on the ground floor of Falconer Hall. Two students take notes on laptops, nine are drinking cups of coffee from the Starbucks in the lobby of Flavelle House, all are focused on Drassinower who is dissecting International News Service v Associated Press. It's a 1918 case in which a court that included Oliver Wendell Holmes and Louis Brandeis attempted to sort out the touchy matter of claims of property in newspaper copy.

Drassinower lectures with flair and humour. He talks for 20 minutes without interruptions from students raising queries or opinions. That seems to be the way Drassinower wants it. Then, as if on an unseen signal, he converts his monologue to a conversation. A young woman wonders about a point Drassinower has made. "That's a beautiful question!" he says. The give and take gathers steam. Ten of the 16 students get into the discussion. Time flies by, and at the end of the seminar's 75 minutes, International News Service v Associated Press has been wrestled into submission.

In her busy office on the second floor of Falconer House, Bonnie Goldberg speaks categorically about the tasks that she and Lianne Krakauer perform. "We're not in career counseling," she says to me. "We're in career coaching. There's a difference."

Goldberg's official title is Assistant Dean, Career Services, while Krakauer is Director, Career Development Programs. Each is a graduate of the law school; each is good-natured, specific and organized. In the 1950s, Bora Laskin made an irregular habit of hooking up third-year students with downtown firms for articling purposes. That was the extent of career coaching in the primitive days at the school. Today, Goldberg and Krakauer cover a range that, by comparison, is staggeringly comprehensive. Maybe a student wants to clerk for a judge but is unsure about how clerking will fit into his or her long-term plans. Or perhaps a student wishes to work in Toronto for five years, then ultimately practise in Vancouver. Or it could be



"Drassinower lectures with flair and humour. He talks for 20 minutes without interruptions from students raising queries or opinions. That seems to be the way Drassinower wants it. Then, as if on an unseen signal, he converts his monologue to a conversation."

that a student is from a small town in Manitoba and prefers to article back there. It is to Goldberg and Krakauer that the students with all the seemingly insurmountable problems turn for resolution.

The two women estimate that, over the course of a year, half of the first-year students turn up in their offices, two-thirds of second year (the pivotal period of recruitment for summer jobs and articling), a handful of third-year students plus a significant number of alumni who return for guidance in altering their career paths. Goldberg and Krakauer use many ingenious vehicles in their work: 25 programs each year on topics ranging from intellectual property to the etiquette of business meals; publication of a myriad of literature dealing with jobs in all varieties of the legal field; the advising and creation of careers in public interest law; and the staging of two career fairs, one in the traditional mode focusing on articling and the other functioning as a public interest information guide.

"Our students are getting more accomplished every year," Goldberg sums up, "and it's the role of our office to make sure they have a multitude of choices in their careers after law school."

On the day that Noah Novogrodsky received word of his admission to Yale Law School, the genocide erupted in Rwanda. Novogrodsky was studying international relations at Cambridge in England at the time, and he watched BBC coverage of the slaughter of the Tutsi people with maddening helplessness. "I was immediately animated to think what I could do about horrors like that," Novogrodsky tells me in the thoughtful manner that seems to be habitual to him.

At Yale Law, where he graduated in 1997, he devoted much time to arguing cases of gross human rights abuses for the school's International Human Rights Clinic. After graduation, he won a fellowship to work in Africa as a lawyer monitoring for such agencies as Human Rights Watch. These tasks took him to the war between Ethiopia and Eritrea and involved him in cases before the African Commission on Human Rights. Next he went into private practice with a San Francisco law firm specializing in refugee, immigration and asylum cases. Finally, in September of 2002, his dedicated record in the field brought him to Toronto and to the law school as the Director of the International Human Rights Program.

The program is built on what Novogrodsky calls four pillars. One is academic, embracing courses that cover international rights. The second is student work on international human rights issues, both research and advocacy on such deeply disturbing problems as the rights of sex trade workers in Thailand, torture in Saudi Arabia, the protection of refugees in Canada. The third of the pillars supports internships that will, for one glowing example, send 30 students abroad next summer to work for human rights organizations. And the fourth pillar, which will show itself at the beginning of the 2003-2004 academic year, is the first international human rights clinic in a Canadian law school, a vehicle by which students will prosecute human rights cases before Canadian tribunals and UN treaty bodies.

Novogrodsky exudes passion for the program. He cites the creation of the internships as just one reason for optimism. Bay Street law firms, he explains, are providing support for the internships by hiring students to work for them through half the summer and to work the other half, still on the firms' payroll, for human rights organizations in foreign countries. Novogrodsky smiles and says, "I find it radical, astounding and

a huge boon to us that big Toronto law firms are actually paying students NOT to work at the firms."

I meet with eight graduate students over cookies and soft drinks in the old world elegance of the Faculty Common Room in Flavelle. The school invests more than $1million in its graduate students. These include both doctoral candidates who are aiming for academic careers and students who are working on masters degrees. Many of the latter have arrived at the school from foreign countries and will take their degrees back home to do policy work or rights work. The graduate program has grown much more international in recent years, a fact that is reflected in the countries represented by the students nibbling the cookies and sipping the soft drinks: Israel, Australia, Peru, Mexico, Uganda, Switzerland and China, plus one man from Ottawa who introduces himself cheerfully as "the token Canadian."

There is a heartening unanimity in the room. Though the foreign students have discovered U of T Law in different ways - from senior lawyers and law professors in their own countries who alerted them to the school's growing significance, from Canadian lawyers working abroad who similarly spread the good word - all are agreed that, once they arrived at the school, it lived up to the advance notices. "When I return to my own country to practise," the woman from Mexico says, "people will respect that I have come from an excellent and famous school."

All are also agreed that one crucial non-academic factor in choosing the school is the appeal of the city and the country, of Toronto and Canada. The woman from Peru, who is studying environmental law, points out just one key motivator for her presence in Toronto: "It is far easier for my husband to find work here than if I picked a law school in the United States." The woman from China nods. "I took a degree at the University of Pittsburgh," she says, "and I feel much more a part of the city in Toronto than I ever did in Pittsburgh." The man from Uganda talks of his relief and pleasure in finding that Toronto was "cosmopolitan." And the woman from Mexico, a no-nonsense speaker, seems to echo the room's sentiments in her comparison of the choice for foreign students between U of T Law and a comparable American school. "It's far cheaper in Toronto," she says with a laugh. "If I went to a university in the United States, I could afford no more than water to drink and bread to eat. Up here, I do better."

The "token Canadian" from Ottawa lays it equally on the line when he talks of his presence at the school. He is working on what he calls "my fifth and last degree." His field is disability law and globalization issues, and he intends to put himself on the market for an academic position. He had an offer to do graduate work at Osgoode Hall Law School followed by a teaching position on the school's faculty. He passed up the sure thing in favour of U of T Law. "The reputation of this school has always been high, and it's higher now than it's ever been," he explains in straight language. "It's the only place for a person like me to be at this stage of my career."

Tess Sheldon is tall, blond and, given her immediate circumstances, preturnaturally calm. She's just off the phone in the offices of Downtown Legal Services, the community clinic at 720 Spadina Avenue offering legal help to low-income clients and staffed by student volunteers from the law school. Tess, a second-year student, has been talking to a client who was refused employment insurance on the grounds that he was fired for misconduct from his job in a large department store. The client complains to Tess that the firing was unfair. He is desperate. Tess assures him that she will pursue his case.

"In almost every one of my social assistance cases," she tells me, "the client wants to talk a lot. That's because the client's problem is not just legal. It's disability and unemployment and the family situation and the immigration situation. A huge number of issues come spilling out on the table."

DLS is a large and meticulously structured operation. It offers services in criminal offences and in five civil divisions: tenants'

rights, employment, consumer rights, income maintenance and university affairs. It includes four satellite clinics that provide aid to youth sex trade workers, Aboriginal people, the homeless and the transgendered. About 100 first-year students work their volunteer shifts at DLS and another 40 students from the upper years contribute as credit students and shift leaders.

In DLS's conference room, Judith McCormack mentions two reasons for feeling especially upbeat about the clinic. McCormack, petite and spirited, is in her second year as DLS's Executive Director after a career in private practice and as chair of the Ontario Labour Relations Board. One of the two reasons she cites for celebration is physical; next year, she explains to me, the clinic will move from its present cramped and fusty quarters to a more splendid space at 655 Spadina, financed largely by a generous donation from Fasken Martineau DuMoulin LLP. The second reason for McCormack's joy lies in DLS's human resources, in the quality of the student volunteers.

"Each student is given a test when they begin," she says. "We hand them a hypothetical set of facts and allow them 30 minutes to put together an argument. All of them show such intelligence on the test, such commitment"—McCormack pauses to pat her hand on her heart in a display of uncompromised sincerity — "that I can't help feeling feel so proud of them and the work they do."

Now, at 3:10 p.m., I am in the Jacob M. Bennett Lecture Hall for the beginning of Ernie Weinrib's Torts lecture on Palsgraf v. Long Island Railroad. Eighty-five students, one half of first year, sit in the hall's raked rows of seats. At the front, Weinrib hangs his jacket on a chair. He positions himself in the space between the platform and the first row, and as he talks, he paces back and forth, five deliberate steps to the right, five deliberate steps back to the left. He punctuates his sentences with an occasional "um, um," in the manner of a jazz tenor saxophonist vamping for a couple of beats while a fresh idea takes shape. The positioning, the pacing, the um ums add up to a personal and winning style of lecturing.

The facts in Palsgraf v Long Island Railroad, a 1929 case, are eccentric. Two men collide while boarding a Long Island train. One of the two is carrying a package of fireworks. The fireworks are set off in the jostling. Their explosion causes injuries to a woman named Palsgraf who is standing on the train platform. Mrs. Palsgraf sues the Long Island Railroad. In the judgment that Ernie Weinrib is explicating, Justice Cardozo, in the majority, finds for Long Island. Justice Andrews dissents.

"Cardozo is right, and Andrews is wrong," Weinrib tells the class. "That's where I'm going with this. I'm just warning you. You don't have to buy it."

Weinrib smiles, but his reasoning seems entirely persuasive. He writes a phrase on the blackboard: "Creation of unreasonable risk and the injury." The phrase is key to a finding of liability, and the simple conjunctive "and" is central to the phrase. Weinrib demonstrates how Cardozo and Andrews differently treat the little word, the "and" which turns out to be far from innocuous.

Students ask questions. One intrepid young man in a baseball cap worn backwards disagrees with Weinrib and with Cardozo. The student is insistent. Weinrib is patient, deliberate and firm. He goes back over the familiar territory of the case in fresh language. It seems to me a dazzling little performance. It's Torts scholarship made accessible.

By the end of Ernie Weinrib's lecture at 4:25, by the end of my day at the law school, after the hours of classrooms and conversations, when I take the subway home, the small ache in my forehead has been replaced by something else. I recognize the new feeling. It's enlightenment. ■

Special Report: Events

Each year, the intellectual atmosphere of the Faculty is enriched by a variety of special lectures and conferences. Bringing faculty and students together with leading scholars from around the world to discuss issues of current importance, these special events ensure that the law school continues to have a broad impact on social policy.

Competing Monopolies: Challenges at the Intersection of Competition and Intellectual Property Laws

Leading academics, lawyers, business people and policymakers attended a one-day conference, Competing Monopolies: Challenges at the Intersection of Competition and Intellectual Property Laws, at the law school on May 10, 2002. Sponsored by the Faculty's Law and Economics Program and the Centre for Innovation Law and Policy, the conference opened with remarks by Professor Michael Trebilcock, followed by a session on competition law and intellectual property. Featured speakers were Willard K. Tom, a partner at Morgan Lewis & Bockius in Washington, D.C., and U of T Professor Jon Putnam, with Professor Roger Ware of Queen's University as commentator.

A second session examined problems of patent fragmentation and patent flooding in biotechnology, computer software and business processes. The speakers included Professor Michael Meurer, of Boston University School of Law (with U of T Professor Ralph Winter as commentator), and Professor Dan Burk, of University of Minnesota Law School (with Richard Corley, Partner, Davies Ward Phillips & Vineberg LLP as commentator).

Issues covered in the afternoon included patent pooling, featuring speaker Professor Richard J. Gilbert of the University of California, Berkeley. The day ended with a session on the strategic exploitation of the standards setting process with Professor Joseph Farrell, University of California, Berkeley.

For papers from the conference, please see the Faculty of Law's web site at www.law.utoronto.ca.

Top (l to r): Richard Owens, Michael Meurer, Dan Burk and Richard Corley

Bottom (l to r): Willard Tom, Richard Owens, Jon Putnam

Professor John Coffee

Understanding Enron's Root Causes: Columbia Law Professor John Coffee speaks at 32nd Annual Commercial and Consumer Law Workshop

In keeping with 32 years of tradition, friends and colleagues gathered for the Annual Workshop on Commercial and Consumer Law from October 18-19, 2002. Convened by Prof. Jacob Ziegel, Professor Emeritus at the Faculty of Law, the event attracted prominent lawyers and scholars from across North America to take part in discussions on contemporary issues such as globalization, Canadian business legislation, and new technologies.

This year's workshop provided two days of enlightening discussion capped by a keynote address by Prof. John Coffee Jr., an internationally renowned professor and scholar at the Columbia University School of Law. Described by the National Law Journal as "one of the most influential lawyers in the United States," Prof. Coffee joined Columbia Law School in 1980. Previously, he was a Professor at Georgetown University Law Centre, and a Visiting Professor at Stanford University Law School, the University of Virginia Law School, and the University of Michigan Law School.

In his address, Coffee traced the historic causes of the current crises in corporate governance, dismissing catchphrases such as "infectious greed" and "failure of morality" that are commonly used in the popular media. Instead, he proposed a systemic explanation rooted in the long-term structural changes in American corporate law and finance, locating the crisis in the unhappy confluence of two interdependent trends.

The first recognizes the diminished efficacy of remedial mechanisms designed to deter accounting irregularities. The second identifies what behavioral economists have termed the "status quo" bias, that is, the self-reinforcing optimism of investors that can distort market realities in times of rapid growth. He said this trend, in concert with lesser deterrence, has contributed to the appeal of "creative accounting".

Coffee continued, saying that consulting began to displace traditional accounting services as the most profitable operation for the Big Five. As a result, auditors were willing to acquiesce to aggressive accounting in order to maintain the relationships that brought in the lucrative consulting contracts. Likewise, institutions on which investors rely for sound advice – such as securities analysts, debt rating agencies, investment bankers and sometimes even lawyers – became immersed in the market bubble by the rapid growth in the late 1990s.

As the bubble expanded, cautionary voices became an unwelcome nuisance, and certainly bad for business as fund managers competed to offer higher returns. As Coffee aptly put it: "It is dangerous to be rational when everyone around you is being irrational."

The Law and Religious Hostility, Scholar Robert Wintemute Speaks about the Rights of LGBTs

Dr. Robert Wintemute

Dr. Robert Wintemute, a leading scholar in anti-discrimination and human rights law, delivered the 2002 Bertha Wilson Lecture on Feb. 12 at the law school. His lecture, entitled Religion versus Sexual Orientation: A Clash of Human Rights?, explored how the law should deal with what he called "religious hostility" toward lesbian, gay, bisexual and transgendered individuals (LGBTs) and same-sex couples.

Religious hostility has no place in the public sphere, Wintemute contended. Yet in the face of the "monolithic anti-LGBT consensus of the world's great religions," political and legal systems seem unwilling to protect minority LGBT rights.

Using a Canadian example, Wintemute discussed whether public funding for Roman Catholic or other anti-LGBT religious schools constitutes "financial support for sexual orientation discrimination analogous to financial support for racial discrimination," violating section 15 of the Canadian Charter of Rights and Freedoms. He argued that while a compelling case could be made against the Catholic church in Canada, the Supreme Court would be unlikely to rule against it.

Wintemute conceded, however, that private institutions should be allowed to make decisions about who can be a priest, a rabbi, or an imam, where people may pray, or which couples may contract a religious marriage, even if it is discriminatory.

A Distinguished Visiting Professor at the law school this year, Wintemute is originally from Calgary, Alta. Since 1991, he has been a faculty member of the School of Law, King's College, University of London, where he teaches Anti-discrimination law, Human Rights law and European law, and is Director of the LLB in English and French law.

Stanford Scholar Speaks of Free Culture at Annual Grafstein Lecture

Professor Lawrence Lessig

Stanford Law School's Prof. Lawrence Lessig offered his theory of "free culture" at the third annual Grafstein Lecture in Communications Law & Policy in January 2002. Expanding on theories described in his books, Code and Other Laws of Cyberspace (1999) and The Future of Ideas (2001), Lessig urged a return to shorter copyright terms and less protection against derivative works, to ensure a steady supply of "free culture", creativity, and innovation.

Lessig despaired that while new technologies are decreasing the costs of creativity, there is a parallel trend of increased intellectual property protection for works. As he wryly noted, "the technological trend means more is possible with less; the legal trend means less is allowed than before."

He described a techno-legal "arms race" between expression-enabling technology and copyright-controlling legislation. Unfortunately, in this "taffy pull," copyright law is winning. The inability to conceive of resources as being part of a commons, not owned or controlled by anyone in particular, he argued, threatens to starve the processes of expression and innovation of ideas - their most important raw material.

Lessig recently presented this theory to the U.S. Supreme Court in Eldred v. Ashcroft, a constitutional challenge of the Sonny Bono Copyright Term Extension Act (pejoratively known as the Mickey Mouse Protection Act), which extended by 20 years both existing copyrights and future copyrights in the U.S.

After delivering the lecture, Lessig spent a week at the Faculty in January 2002 leading an intensive course on "The Law of Cyberspace."

For the full story, please log onto the Faculty of Law web site at www.law.utoronto.ca .

Issues of Systemic Racism in the Criminal Justice System

A conference at the Faculty on November 29th, examined the important issue of systemic racism in the Canadian criminal justice system. Improving community development, and a refocusing of the media on other types of largely unreported crime were cited as ways of addressing possible racism.

U of T law professors Kent Roach and Sujit Choudhry, conference chair, called for provisions banning racial profiling in the Criminal Code. Prof. Audrey Macklin identified ways in which new immigration laws and policies that make immigration to Canada more difficult also serve to create new groups of illegal immigrants, thereby creating discrimination. Issues specific to Aboriginal Canadians were addressed by Jonathan Rudin, Program Director at Aboriginal Legal Services and co-author of the Royal Commission on Aboriginal Peoples' report on criminal law, entitled Bridging the Cultural Divide. As well, Prof. Wortley of the Centre of Criminology outlined statistical support for the view that race plays a role in decisions of police to detain, arrest and search youth.

A talk by Justice David Cole, Co-Chair of the Commission on Systemic Racism in the Ontario Criminal Justice System, focused on the prevalence of Crown Attorney discretion in the handling of criminal cases, while Julian Falconer, senior partner with Falconer Charney Macklin, and David Tanovich, partner at Pinkofskys, outlined ways in which civil litigation and Charter litigation can be used to address the problems of systemic racism.

The conference, one of the many initiatives undertaken by the Diversity Committee struck last year by the Dean and chaired by Prof. Choudhry, is one example of the Faculty's focus on diversity at the law school. Other initiatives include outreach to Toronto area high schools, the new Diversity Workshop series of lectures organized by Prof. Kerry Rittich, and sponsorship of the speaker series entitled "Theorizing Transnationality, Gender and Citizenship," hosted by the Institute of Women's Studies and Gender Studies.

Human Rights in the Age of Terror: Yale Professor Delivers Cecil A. Wright Memorial Lecture

Professor Harold Hongju Koh

In the aftermath of the destruction of the World Trade Centre, many members of society have deemed September 11th the beginning of the "age of terror."

The effects of this new era can be construed as immediate, with a seeming erosion of the foundational value of human rights. Appropriately, "Human Rights in the Age of Terror" was the selected topic for this year's annual Cecil A. Wright Lecture, which featured a compelling speech by Prof. Harold Hongju Koh of Yale Law School.

Despite pressure to recede to a global landscape of protectionism and the imposition of unilateral morals, Prof. Koh argued for the sustained adherence to international human rights standards. "The observance of human rights is a measure of the rectitude of our actions," Koh articulated.

In his concluding remarks, Prof. Koh argued strongly against the use of military tribunals and in favour of adjudication via the court system. Without such a separation of powers and adherence to due process, international treaties stand to be violated and the "rule of law" undermined, he concluded.

Canada's Chief Justice Speaks at the 2002 David B. Goodman Memorial Lecture

Chief Justice Beverley McLachlin

Chief Justice Beverley McLachlin, the first woman appointed to head the Supreme Court of Canada, spoke to a packed Bennett Lecture Hall about Canada's experience with racism and the law, the topic of this year's David B. Goodman Memorial Lecture.

In "Racism and the Law: the Canadian Experience," Chief Justice McLachlin stressed that the future of Canada hinges upon how well we are able to deal with our diverse cultural makeup.

"We must have government and legal structures that recognize our diversity and allow us to live together in harmony and in a way that promotes the fullest possible contribution from all of our citizens, regardless of our race or background," McLachlin argued.

"Over the past century and a half, Canadian attitudes on how the law should deal with racial and cultural differences have undergone an important evolution," she continued. "We have moved from the initial stance of allowing the law to actively or passively perpetuate inequality, through a transition period of equal opportunity and access, to a third period in which we see the law as a tool to actively combat inequality and enhance substantive equality."

For the full story, please refer to the Faculty of Law web site at www.law.utoronto.ca .

Gender Identity and the Law: Canadian and European Perspectives

For the second year in a row, a panel addressing lesbian, gay, bisexual, and/or transgendered issues was co-sponsored by the Faculty of Law and UTOIL (U of T OUT in Law). This year's panel, held Feb. 5 and entitled Gender Identity and the Law: Canadian and European Perspectives, addressed the law's treatment of issues relating to gender identity, especially the rights of transexual and transgendered persons.

Professor Robert Wintemute, a Professor at King's College in London and a Distinguished Visiting Lecturer at U of T's Faculty of Law for 2002, canvassed the European and British case law regarding gender identity issues, addressing such topics as the legal recognition of gender reassignment, a transsexual person's right to marry persons of their birth sex, funding for gender reassignment surgery, protections against employment discrimination, as well as the rights of transgendered persons who are not interested in gender reassignment surgery. Panelist, Cynthia Peterson, a partner with the Toronto law firm of Sack Goldblatt Mitchell, addressed the Canadian legal treatment of many of these same issues, focussing in particular on cases that have arisen in her practice.

Both presenters noted that, although legal institutions are increasingly being called upon to address issues of concern to lesbians, gays, and bisexuals, the case law on issues of particular concern to transexual and transgendered persons is still comparatively slim.

While the legal treatment of gender identity issues is still in its earliest stages, Wintemute and Petersen suggested that courts and administrative decision-makers are still very much grappling with how best to address issues arising in gender identity cases: what the appropriate scope of rights should be, what discrimination on the basis of gender identity might encompass, and what defences might be available to defendants.

For full coverage of this panel discussion, please visit the Faculty of Law web site at www.law.utoronto.ca .

Poverty's Challenges, Law's Responses: A Public Interest Conference

(l to r): Nikki Lundquist, Peter Rosenthal('90), David Baker('87)

Co-organized by the Student Public Interest Network Legal Action Workshop (SPINLAW) at the U of T Faculty of Law and Osgoode Hall Law School, this exciting public interest conference attracted close to 200 attendees, including professors, practitioners, judges, deans of both law schools, community members, and undergraduate, law and high school students.

"When we were contacting people to speak at the conference, it was quite apparent that there is a strong network of lawyers in the Toronto area who are committed to social justice issues and to combating poverty issues," said event organizer Mindy Noble, a third-year law student from U of T. "It is important for students to have opportunities to interact with all of these people because it reassures us that when we graduate we will have opportunities to continue the work we have been doing in law school."

The conference began with the law schools' first ever Public Interest Career Fair and a keynote address by Justice Rosalie Silberman Abella ('70) of the Ontario Court of Appeal. Saturday plenary sessions included: "Poverty's Challenges" featuring John Clarke of the Ontario Coalition Against Poverty and Cathy Crowe of the Toronto Disaster Relief Committee; and, "Law's Responses," featuring Professor Peter Rosenthal and practitioner David Baker, a specialist in constitutional, human rights and employment law issues.

Saturday's featured session was a moot, arguing whether the status of social assistance recipients should be an analogous ground under section 15 of the Charter. The mooters were Raj Anand, a former chief commissioner of the Ontario Human Rights Commission and currently a lawyer with WeirFoulds LLP, and Lori Sterling, a legal director with Ontario's Ministry of the Attorney General.

TIP Conference Tackles Censorship, Privacy in Digital Age

(I to r): Stephen Zolf, Professor Michael Geist, Susan Peacock , Professor Jonathan Putnam

The 3rd annual Technology and Intellectual Property Conference, "Censorship and Privacy: Civil Liberties in the Digital Age," was another successful example of a student-run affair that unfolded during the last academic year. The day-long conference was a forum for students, lawyers, government, industry and academics to discuss the intersection of technology and civil liberties.

Among the highlights were keynote addresses delivered by two of North America's leading academics, Prof. Pamela Samuelson of the University of California at Berkeley, Boalt Hall School of Law, and Professor Amitai Etzioni of George Washington University. Samuelson reflected on the ways in which new US copyright laws have limited free expression and inhibited innovation, while Etzioni spoke about the limits of privacy, discussing the challenges of crafting and balancing privacy rights in an environment of technological change. The conference also featured George Takach, one of Canada's leading IT lawyers and a lecturer at Osgoode Hall Law School, Prof. Michael Geist from the University of Ottawa, Faculty of Law, Susan Peacock of the Copyright Collective of Canada, and Professor Jon Putnam from the University of Toronto, Faculty of Law.

Property's Uneasy Future (and Past), The 11th annual John M. Olin Public Lecture in Law and Economics

Professor Saul Levmore

Saul Levmore, Dean of the Law School at the University of Chicago, provided this year's annual John M. Olin Public Lecture in Law and Economics, the keynote event of the Canadian Law and Economic (CLEA) Conference held at the Faculty of Law. The September 2002 Conference attracted prominent North American and European academics, offering 20 sessions on an array of issues relating to law and economics, including competition law, securities regulation and Competition Act amendments.

Levmore's lecture, "Property's Uneasy Future (and Past)" is available on the Faculty of Law web site at www.law.utoronto.ca .

175th Alumni Reception in Tokyo

Left (I to r): Current Law student Martha MacDonald is spending a term as a foreign legal trainee in Japan. She is pictured here with Dean of Law, Prof. Ronald Daniels

Middle (I to r): Graduates and current students with Dean Ron Daniels

Right (I to r): Dean Ron Daniels, Dr. Atsumi Ohno and Mr. Shiro Kiyohara

On Thursday November 14th, more than 70 U of T alumni, representing all grad years and disciplines, turned out for a special reception held in Tokyo, Japan to celebrate the University's 175th anniversary. The law school was particularly well represented, with a number of current students and alumni attending the event along with Dean Ron Daniels.

Are we in good shape – or critical condition?

Contemporary issues surrounding reforms to our health care system, bioethics, euthanasia, human rights law, reproductive and sexual health law, and the regulation of human beings in research are posing complex challenges for Canadians—and for societies around the world.

In the following series of articles, the Faculty of Law's Health Law and Policy scholars offer timely perspectives on various health laws, policies and systems, and ideas for making them more efficient and just.

The first article, co-authored by Prof. Sujit Choudhry and Prof. Colleen Flood, offers a glimpse into the public debate about the kind of health care system Canadians want. As consultants to the "Romanow Commission", they produced a submission entitled *Strengthening the Foundations: Modernizing the Canada Health Care Act*. Many of their recommendations are reflected in the commission's final report released late November 2002.

Next, Prof. Trudo Lemmens writes about the need for regulation of the trade in human research subjects (page 25); Prof. Bernard Dickens considers whether the criminalization of sex selection in Canada is justified (page 28); and Prof. Rebecca J. Cook tackles serious questions relating to safe motherhood (page 30).

The Health Law and Policy Group (l to r): Professors Colleen Flood, Sujit Choudhry, Trudo Lemmens, Rebecca J. Cook, and Bernard Dickens.

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Health Care

Strengthening the Foundations: Modernizing the Canada Health Act

By Professors Colleen M. Flood & Sujit Choudhry

THE CANADA HEALTH ACT ("CHA") is a federal statute that provides for the transfer of federal funds to provinces that comply with certain conditions in the provision of their respective health insurance schemes. But the CHA is much more than a mere spending statute in the hearts and minds of Canadians. Indeed the CHA has become a document of near constitutional status, emblematic of Canadian values and a guarantee for all Canadians of the security of health insurance.

As consultants to the Commission on the Future of Health Care in Canada (the Romanow Commission) we wrote a report on whether the CHA could continue to realize the contemporary needs of Canadian society. The full text of our report can be viewed at (www.law.utoronto.ca/documents/flood/romanow_report.pdf). Our report concludes that although the CHA has served Canadians extremely well change is needed. We argue that change must occur in order to realize important Canadian values in the just distribution of health care given changing health care needs, which in turn are a function of changing technologies, changing expectations, and changing demographics. Three goals drive our recommendations: first, how to modernize the criteria of the CHA and expand its scope to better reflect the needs of contemporary society; second, how to give content to the criteria in the Act, cast as they are in very general terms; and, finally, how to overhaul federal-provincial relations in the health care sector.

A. MODERNIZING THE CRITERIA: In the first part of our report we consider how to modernize the five criteria of the CHA ("universality", "portability", "public administration", "comprehensiveness" and "accessibility.") It is important to recognize the context of our recommendations here and, in particular, how they respond to the federal government's failure to enforce these criteria. As required by the CHA, the federal government has withheld funds on a dollar-for-dollar basis where a province has allowed extra-billing or user charges. However, the federal government has never enforced the five criteria vis-à-vis a province by withholding federal transfer monies. As we discuss in our paper this is partly due to the fact that the federal government has lost its moral authority to impose its own vision of national standards across the provinces given the decline over time in the share of funding it contributes to health care. But it is also likely due in part to the difficulty of determining breaches of the criteria. The five criteria are couched in general terms and their definitions are circular: comprehensiveness, for example, means that all insured services must be insured. Whether or not a province has complied with the criteria of comprehensiveness or accessibility, for example, is easily debatable and reasonable people will disagree. Thus in considering how to modernize the criteria we looked for ways to give them meaningful content whilst respecting that it is the provinces that have constitutional responsibility for health care

"When we speak of governance, we begin to get to the heart of what has been lacking in the Canadian system and what is required to ensure sustainability."

and recognizing that there may be different means by which to achieve similar ends.

Although our report includes recommendations with respect to all five criteria, here we will discuss only some of our recommendations with respect to public administration, comprehensiveness, and accessibility.

PUBLIC ADMINISTRATION: The CHA has become an icon of Canadian values, yet its actual content is poorly understood. This is most true of the requirement of "public administration". This criterion requires that the plan be "administered and operated on a non-profit basis by a public authority appointed or designated by the government of the province." There is nothing in the CHA to prevent private, for-profit providers from participating in the publicly funded system, whether they are physicians or firms. Nonetheless, interest groups continue to object to the participation of for-profit firms and often argue that their participation is in contravention of the CHA. This confusion arises because no crisp distinction is made in public discourse between financing (which the CHA appropriately safeguards as public) and delivery (which has historically always been a mixture of public, not-for-profit and private, for-profit providers). The unspoken concern behind the opposition to private, for-profit firms may be that by condoning the participation of for-profit providers, we are on a slippery slope toward more private financing in the system.

We do not doubt there would be significant regulatory challenges if there were a significant increase in the number of private, for-profit firms operating in the health care sector, particularly in acute care. Also given the evidence that for-profit hospitals in the US are associated with higher mortality rates than not-for-profit hospitals most provinces are unlikely to facilitate the introduction of a large for-profit hospital sector.

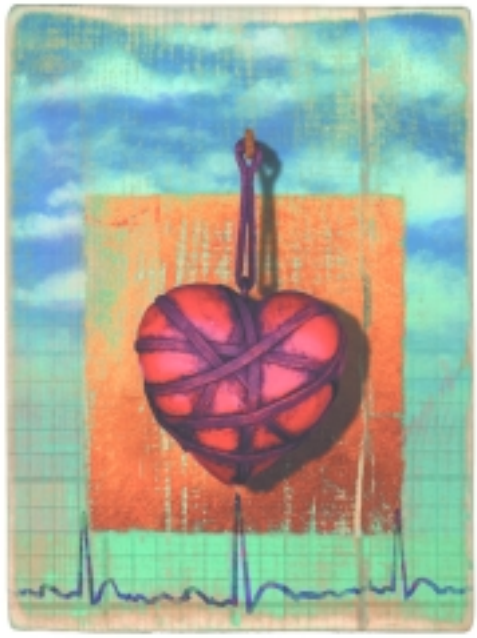
However, a strong commitment to full public funding, along with rigorous enforcement of the prohibitions on extra-billing and user charges, should be sufficient to keep a check on for-profit firms trying to circumvent the restrictions on private financing or trying to create de facto a two-tier system. If we are not correct in this prediction, then the CHA may have to be revisited. For the time being, there seems to be sufficient evidence both for and against for-profit provision in different spheres that this matter is best left to each province's discretion.

In our report, we also question whether "public administration" is as fundamental to Canadian values as "public governance." To speak of public administration, in our view, understates the significant governance role that is needed on the part of provincial governments in managing and regulating their respective health care systems. When we speak of governance, we begin to get to the heart of what has been lacking in the Canadian system and what is required to ensure sustainability. In our opinion, the most significant problem is a failure to commit to strong governance and accountability for decision-making. Here, we do not mean accountability solely for dollars spent, but accountability to citizens for how the system is

PROFESSOR COLLEEN M. FLOOD

Professor Colleen Flood's primary area of study is comparative health care policy, public/private financing of health care systems, health care reform, and issues relating to accountability and governance. Her work has helped to illuminate key health issues such as how to galvanize the publicly funded system through accountability and how to modernize medicare in Canada. She was a consultant to both the Senate Social Affairs Committee studying health care in Canada and the Royal Commission on the Future of Health Care in Canada, for which she co-authored (with Professor Sujit Choudhry) a report entitled *"Strengthening the Foundations: Modernizing the Canada Health Care Act."*

An assistant professor at the Faculty of Law, Professor Flood was the 1999 Labelle Lecturer in Health Services Research and is the author of numerous health law articles and book chapters, as well as the author of *International Health Care Reform: A Legal, Economic and Political Analysis.* She is also co-editor of *Canadian Health Law and Policy.* Professor Flood holds a B.A. and LL.B. from the University of Auckland, New Zealand. She practised law for three years prior to beginning her graduate work, completing an LL.M. (1994) and S.J.D. (1998) at the University of Toronto. From 1997 to 1999, she was the Associate Director of the Health Law Institute at Dalhousie Law School in Halifax, Nova Scotia. She is also affiliated with the Institute for Research in Public Policy, as a member of their Taskforce on the Future of Healthcare in Canada and as a commissioned researcher.



governed and for the delivery of timely and high-quality health care. We are thinking of democratic accountability: how to ensure that the State, and decision-makers empowered by it, take responsibility for the decisions they make, and are accountable in a fair and more direct and timely manner than is possible through elections every four or five years. This could take a variety of forms and will differ from province to province. For example, provinces might choose to devolve and decentralize decision-making closer to affected communities, make consultation mandatory, provide for the election of regional health authorities, ask citizens to choose primary care groups, establish patients' bills of rights, or create patient ombudspersons.

The federal government could take a lead here by amending the CHA to include a more powerful requirement for good governance. Thus, we would recommend the substitution of a requirement for "public governance and democratic accountability" in place of a requirement for "public administration." Some might argue that our logic is circular here, for if "public administration" is not clear, then neither is "public governance and accountability." However, as we discuss below, the primary mechanism for enforcing public governance and democratic accountability should be asking the provinces to account for the processes they have instituted to improve public governance and democratic accountability. Thus, the provinces themselves will flesh out the meaning of the criterion through governing their respective plans. They will, in effect, bind themselves through this process. To further the accountability of federal and provincial governments, we also recommend that the federal government be held to account for the total sums transferred to the provinces for health, and the provinces for the spending of all federal transfers. To facilitate this, it is vital that health care transfers be decoupled from transfers for social assistance and post-secondary education under the Canada Health and Social Transfer (CHST). In its stead, there should be a separate federal transfer, which we would call the "Canada Health Transfer." Whatever benefits there are from the flexibility of consolidating federal funds are overwhelmed, in our view, by the loss of accountability for expenditures on health.

COMPREHENSIVENESS: The CHA only covers "medically necessary" hospital and "medically required" physician services. Thus which hospital and physician services are publicly funded turns on interpretation of the key phrases of "medically necessary" and "medically required" neither of which are defined in the CHA. In practice, provincial governments and medical associations negotiate which services are to be publicly funded in the process of determining the fees that physicians will receive in exchange for providing services. Presently both the process of deciding which services to fund and the process of delisting rely on provincial governments to represent public values and on physicians to apply technical expertise. However, this process does not work well because, at present, the process for determining what is "medically necessary" is too intimately connected to the process for determining compensation rates for physicians. We argue in our paper that the CHA should require provinces to establish transparent and democratic processes to determine on an ongoing basis, which services and goods should or should not be publicly funded. It is important that public values and technical evidence (for example of effectiveness of various treatments) be incorporated into these processes.

We believe that an approach to enforcement of the CHA which focuses primarily on requiring the provinces to demonstrate the processes they have in place to define and comply with the criteria on an annual basis would shift the focus of federal-provincial relations away from disputes over enforcement and pervasive acrimony toward a partnership between the federal and provincial governments. By shifting toward a system that focuses primarily on accountability for processes we recognize that a one-size-fits-all approach may be appropriate to the values the system strives for but not the various means of realizing those values.

In terms of comprehensiveness, the scope of services protected by the CHA needs to be expanded to reflect changes in technology. With advances and developments in technology, magnetic resonance imaging (MRI) and genetic testing need not be delivered within hospital walls or

"Canada stands in the odd company of Mexico, the US and Turkey in not ensuring universal access to prescription drugs."

necessarily under the supervision of a physician. If a two-tier system is allowed to develop for diagnostic services, then people who could afford to purchase diagnostic services in the private sector would also be able to gain quicker access to publicly funded hospital and physician care. This would, in our view, undermine the spirit and purpose of the CHA. Thus we recommend that the scope of services protected by the CHA be expanded to include all diagnostic services. We also recommend the creation of separate legislation to set national standards for the insurance of prescription drugs and home care. Canada may seem to be a model for ensuring fair access to physician and hospital services, but, for example, amongst developed OECD countries it stands in the odd company of Mexico, the US, and Turkey in not ensuring universal access to prescription drugs. Legislation setting national standards in the insurance of prescription drugs and home care will, in our opinion, likely have to take the form of a new shared-cost statute similar to the CHA. One significant difference will be that this new legislation need not, in our view, provide for an outright ban on user charges. For example, it may be appropriate to allow user charges to attach to home-making services. As another example, we think it acceptable to impose a user charge upon a brand name drug when the cheaper generic drug is just as effective.

Although we advocate expansions of the range of services that are protected by the CHA we do not necessarily advocate significant expansions in government funding, at least over the longer-term (in the short-term funding injections will be required to facilitate change and appease various interest groups). Our system lacks a principled process for determining what services to publicly fund. It is irrational that the CHA does not require public funding for insulin (as the CHA does not extend to prescription drugs) but annual general check-ups (for which there is no evidence of cost-effectiveness) are fully publicly funded. It is, in our opinion, imperative to the future sustainability of Medicare in Canada that the possible range of services and treatments that are publicly funded be expanded to include drug and genetic therapies and other emerging innovative ways to treat health care needs. However, at the same time, there must be effective processes for excluding from the publicly funded basket services that are of no proven effectiveness or services and treatments which have been superseded by newer technologies.

ACCESSIBILITY: There is no explicit requirement in the CHA for Canadians to have access to "timely" care. Timeliness of care and concerns about waiting lists have received considerable media attention. Growing waiting times impose greater private costs on Canadian patients in terms of days off work, lost productivity, and so on. As these costs are not covered by the public purse, there may not be sufficient incentives within the existing system to control them. That being said, compared with other countries like the United Kingdom and New Zealand (which allow extra-billing and a two-tier system), Canada has a significantly smaller proportion of its population on waiting lists, and, on average, patients have to wait for a much shorter time for treatment. So the answer is not to open up the system to more private financing but rather to improve the performance of the public system.

Canadians are accustomed to speedy and efficient service in all other spheres of life; they can be expected to demand it in health care as well. If Medicare does not respond to Canadians' concerns regarding timeliness of treatment, support for it will be undermined and pressure for privately financed options will increase. The criterion of accessibility in the CHA should be changed to read "reasonable access in a reasonable time frame, given the nature of the health need", in order to incorporate a guarantee of timely access. The CHA should require the provinces to account for the processes they have in place to

The Canada Health Act has served Canadians extremely well since 1984. However, to continue to realize the values that lie behind the Act, some changes are necessary.

ensure that all residents of the province have reasonable access to health care goods and services in a reasonable time frame.

B. EXTRA-BILLING AND USER CHARGES: To prevent the emergence of two-tier health care and queue jumping, we recommend that the prohibition on extra-billing should remain in place. Extra-billing would allow wealthier Canadians to queue-jump. There is no evidence from any country that allowing extra-billing will reduce waiting lists in public hospitals. On the contrary, countries like New Zealand and the UK that allow extra-billing and queue jumping have longer waiting lists in their public hospitals. Evidence shows that user charges for hospital and physician services may deter both unnecessary and necessary use of care. Thus the prohibition on user charges should remain in place unless a province could establish that a proposed regime of user charges would deter Canadians from seeking unnecessary care but not necessary care. The CHA appropriately prevents experimentation with private financing through the prohibitions on user charges and extra-billing but neither impedes nor encourages reform or innovation in the delivery of health care. We think the CHA should be reformed to actively encourage innovation and evidence-based reform in the delivery of care.

C. OVERHAULING FEDERAL-PROVINCIAL RELATIONS IN HEALTH CARE: Federal-provincial relations in health care are in desperate need of repair. To this end, Medicare requires the creation of two sets of joint federal-provincial institutions to govern it. First, we propose the establishment of a jointly appointed, non-partisan and expert Medicare Commission to work with the provinces to establish processes to better satisfy the criteria of comprehensiveness, accessibility, and public governance and accountability. The Commission would reward provinces that meet objective performance indicators or that undertake those reforms the Commission identifies as worthwhile. To effect real change in the system, the Commission would have to receive a significant sum of federal funds above and beyond existing transfer payments. Second, we propose the creation of permanent procedures under the Social Union Framework Agreement to deal with disputes over the interpretation of the CHA. Specialist panels would hear disputes. Moreover, in addition to being triggered by government complaints, the machinery could also be invoked directly by citizens.

CONCLUSION

The Canada Health Act has served Canadians extremely well since 1984. However, to continue to realize the values that lie behind the Act, some changes are necessary. Instead of regarding the CHA as a quasi-constitutional document that should be altered with great reluctance, the statute should be regarded as a delivery vehicle for public health care policy that from time to time must be adapted to changing circumstances. In other words, the Act is a means, not an end in itself. At this critical juncture, to view it in any other way would be dangerous because it would make the CHA an obstacle to necessary change in the structure and governance of Medicare as opposed to a facilitator of those changes. Underlying and uniting the specific reforms we propose, is a broader call for dramatic change in the mindset that governs the legal and governance framework for Medicare. For Medicare to survive into the 21st century, it must be both effective and legitimate. And to be both of these things, it must be flexible and adaptable. Canadians deserve no less. ■

PROFESSOR SUJIT CHOUDHRY

Health law and policy is one of Professor Sujit Choudhry's principal research and teaching interests. His work has touched on a variety of important issues including Ontario's consent to treatment legislation, end-of-life issues and living wills, the regulation of research on child subjects, and enforcement and reform of the Canadian Health Act. As a consultant to the Royal Commission on the Future of Health Care, he was co-author (with Professor Colleen Flood) of a report entitled "Strengthening the Foundations: Modernizing the Canada Health Care Act". He is currently launching a project on provider fraud and gaming in the Canadian health care system.

An assistant professor at the Faculty of Law, Professor Choudhry is also a member of the University of Toronto Joint Centre for Bioethics. He holds law degrees from the University of Oxford, the University of Toronto, and the Harvard Law School, as well as an undergraduate degree in Cell, Molecular, and Developmental Biology from McGill. Prior to joining the Faculty of Law, he served as law clerk to Chief Justice Antonio Lamer of the Supreme Court of Canada.

Regulating the Trade in Human Research Subjects

By Professor Trudo Lemmens

- A recruitment firm pays young female employees bonuses in the thousands of dollars to recruit mostly male schizophrenic patients into clinical trials.
- A family physician's practice advertises on the internet that they are able to recruit quickly patients for drug trials and post marketing studies, using their two full-time research coordinators and their computerized patient data base of 40,000 patients.
- A 'fast recruiter' is convicted for fraud in the United States after it is discovered that he falsified research records to indicate higher numbers of subjects than actually enrolled. He earned in previous years up to $500,000 by conducting drug trials.
- An industry article on subject recruitment recommends using "an endorsement by your well-respected newspaper reporter or TV news anchor" to generate "more phone calls needed to fill studies."

These are only some of the examples from an official report by the Department of Health and Human Services' Office of Inspector General as well as from journal articles in the Washington Post that highlight the phenomenon of financial recruitment incentives in drug-sponsored clinical trials.

Concerns about the potential negative impact of the increasing financial interests on medical research are on the rise. They have been highlighted by various high profile cases and empirical studies. After 18-year old Jesse Gelsinger died in a gene therapy trial in 1999, an FDA investigation revealed that the principal investigator in the study as well as the University of Pennsylvania had stock worth millions of dollars in the company sponsoring the trial. This may have influenced why he was exposed to what appeared to be an extraordinarily risky therapy. Less dramatic but no less significant issues about financial conflicts of interests have also been raised by various empirical studies. A recent study revealed that stock-prices of pharmaceutical companies go up in direct correlation with outcomes of research only known to researchers, raising suspicion about insider trading in research. Several studies also show a correlation between sources of funding and outcome of research. Drug company sponsored studies are significantly more likely to provide positive outcomes for a sponsor's drug than independently funded research. The potential influence of the desire for good relations with industry has also been at the heart of several controversies within academia. The battle between Dr. Olivieri and Apotex over her duty to report adverse findings and the dispute between Dr. Healy and the Centre for Addiction and Mental Health lead to significant soul-searching and changes in institutional and university policies in our own University of Toronto. Funding agencies are also partially being blamed for contributing to problems of conflict of interest by their frequent insistence on private commercial matching funding. The list of issues is much longer.

But more than any of these conflicts, the issue of financial recruitment incentives brings home the message that sheer commercialism is a part of every day clinical research. There is, unfortunately, currently little in place, in particular not in Canada, to deal with the potential negative impact of these practices.

The phenomenon is directly related to the increased competition between sponsors of clinical trials. More drug trials are undertaken than ever before in the race to get new drugs on the market. Advances in genetics and the development of pharmacogenomics allow for more targeted and diversified drug development. More than 450 heart, cancer & stroke drugs are currently under development in the U.S.A., and 191 drugs for Alzheimer's, arthritis and depression. There are also more than 3,000 drugs in pre-clinical testing. In Canada, there were 800 applications for new drugs in 1998. As a result of these developments, demand for research subjects has sky-

rocketed. According to the Office of Inspector General, new drug applications used on average 4,237 subjects in 1995. Even if Canadian averages would be significantly lower it still means that hundreds of thousands of research subjects are needed to fill up clinical trials, which can be added to the thousands of subjects recruited for other forms of research.

The speed of testing is also crucial for sponsors. Average costs of drug developments are estimated at US $400-500 million, whereas every delay in bringing a new drug to the market may deprive a company of an estimated average of $1.3 million per day in profits. It is thus no surprise that more and more community based physicians are involved in research. Sponsors use financial rewards and penalties to push them to meet targets of fast recruitment. Many academic researchers compete with family physicians for these lucrative trials, sometimes for personal gain, or to pay salaries of researchers who can then get involved in more interesting research. For academic researchers, other perks are used as recruitment incentives: first authorship on articles reporting the results of the study in exchange for good recruitment. And specialized service companies openly advertise on the web their experience in writing up the results of studies for publication.

WHAT ARE THE CONCERNS? A major concern is the potential erosion of appropriate consent. Real fraudulent behaviour can be dealt with under criminal law. But more subtle forms of influence are more likely to occur and harder to control. Researchers who have already recruited 29 patients and know that number 30 comes with a $20,000 recruitment bonus will find a way to convince patients.

Safety is another important concern: financial incentives may push researchers to disrespect inclusion criteria, thereby putting the subject at risk as well as undermining the validity of data. Many of these drug trials involve a placebo-control even when standard therapy is available and thus expose 50% of patients to a no treatment arm. This violates the Canadian funding agencies' Policy Statement for research involving humans and exposes researchers to legal liability. Community based physicians may lack experience and training in conducting research and may lack the ability to critically evaluate the merits and risks of a study. Privacy concerns have also been raised, as highly private information is gathered over the web as part of the development of large commercial data banks on research subjects. There is also increased pressure to obtain access to patient records in medical offices for pure recruitment purposes. More general concerns relate to the impact of these developments on the validity of research. In this competitive environment, commercial sponsors control research more easily, in particular when a large number of physicians at different sites are involved. Careful selection of subjects and research methodology combined with the possibility of 'selective publication' may contribute to obtaining fast approval for minimally effective and potentially harmful drugs. Once a drug is on the market, marketing can then do the rest. This development may not only put future patients at risk, it also can create an unsubstantiated burden on the health care system. Finally, various forms of financial recruitment incentives and close ties between researchers and industry may also impact on the overall direction of research. Drug sponsors are not interested in sponsoring the impact of non-drug related public health measures. Researchers who conduct research sponsored by the federal funding agencies increasingly encounter difficulties recruiting research subjects. They cannot offer recruitment incentives or lure research subjects with substantial payments and glossy advertisements.

Are there mechanisms to deal with these developments? In the wake of various controversies, and following temporary shut-downs by funding agencies of some of America's most prestigious research institutions, various mechanisms have been proposed to strengthen conflict of interest rules within academia. A Task Force of the Association of American Medical Colleges recently issued two important guidance reports on researchers' as well as institutional conflict of interest. It firmly recommends that institutions separate entirely financial management from the conduct and oversight of research and to establish independent conflict of interest committees. On an individual level, it recommends that institutions introduce a rebuttable presumption that an individual who holds a significant financial interest may not conduct such research. Interestingly, it also indicates the need for taking into consideration all financial interests and advisory functions of individual researchers with industry. Indeed, strict rules for finder's fees are worthless if researchers are paid lavishly to sit on advisory boards. This can be an indirect way to ensure full collaboration with clinical trials recruitment. A 2001 draft guidance of the U.S. National Institutes of Health points in the same direction in highlighting the need for stronger rules on all forms of financial interests. This may go a long way to address concerns about conflict of interest within academic institutions. Tighter conflicts of interest policies within academic institutions may also strengthen their critical role in a general research environment increasingly dominated by commercial interests. But this will not solve all of the problems identified earlier.

While research ethics guidelines and professional codes frown upon researchers' acceptance of finder's fees, there is, in practice, little control on compliance. In Canada, regulatory agencies conduct (often limited) review of the safety of new drugs used in trials and on the methodology used to show efficacy. But a short default-delay period of 30 days allows drug-companies to start a trial if no objection is raised within that period and if Research Ethics Board (REB) approval has been obtained. There is no investigation into the potential impact of financial recruitment incentives. REBs, which according to Health Canada's Therapeutic Products Directorate "help to ensure that conflicts of interest situations are avoided and that the health and safety of the trial subjects remain the paramount concern," do not have a clear legislative or regulatory

framework that governs their composition, functioning and role. They are generally understaffed, rely on overcommitted volunteers, and are generally underfunded. While they have an important public policy mandate to protect human subjects, they do not satisfy some basic requirements of administrative law. Institutional REBs lack independence or can easily be perceived to be biased because of institutional interests. Increasing reliance of academic institutions on private funders augments concerns about direct or indirect institutional pressure on REBs. Many Contract Research Organizations, for-profit companies specialized in conducting research for pharmaceutical sponsors, have set up internal REBs, which suffer from similar conflicts of interest. For most of the clinical drug trials involving community based physicians, commercial REBs are used. These REBs are affected by an inherent conflict of interest since they are paid to make a decision that has an immediate financial impact on their clients. Moreover, there is no prohibition to shop for the most lenient commercial or institutional REB. If a study does not get through in one place, chances are it will work in another.

There are currently no formal requirements of registration, education and training that could partially compensate for this administrative vacuum. There is also no systematic monitoring by regulatory agencies of these REBs and no official accreditation or certification mechanisms. The major federal funding agencies are working on the development of a compliance mechanism for institutional REBs and there is also an initiative by a consortium of REBs. But this is still in a very early stage and the funding agencies have no authority over research outside federally funded academic institutions.

In the throne speech of October 2002, Governor General Adrienne Clarkson mentioned as one of the agenda items of the government that it would make work of the development of an appropriate system of governance of research. Health Canada is also discussing various options and various provinces have started to look into regulatory schemes for REBs. The development of an accountable, coherent and comprehensive regulatory framework for the governance and monitoring of research involving human subjects is clearly long overdue.

Awaiting firm legislative initiatives, other stakeholders have to take action. The Canadian Medical Association refers in a policy statement on relations with industry to the issue of finder's fees. But it basically relies on REB review to deal with this issue and has no authority to intervene. In a paper written with University of Toronto law student Paul Miller, currently under review for publication, we argue that physicians should be made aware that they could be charged under codes of professional conduct. In Ontario, for example, a statutory basis for conflict of interest-related complaints is found in the Medicine Act.

Various provisions related to referral fees could be interpreted to apply in this context. General professional misconduct could also be found in some of the more blatant recruitment practices since they can be qualified as disgraceful, dishonourable or unprofessional actions. The College of Physicians and Surgeons should inquire into these practices and take action where needed. Health care advocates should also be made aware that when professionals fail to inform patients adequately of their financial interest, they open themselves up to liability under torts for battery or negligence or even for a more general breach of fiduciary duty. Advocates should be sensitized to the possibility that exchange of money may have influenced the consent process and conduct of researchers in clinical trials. Researchers should be sensitized to the potential pernicious influence of financial recruitment incentives and to larger conflict of interest issues. The threat of legal and regulatory intervention may help to create, to use the words of the Association of American Medical Colleges, a "culture of conscience." ■

PROFESSOR TRUDO LEMMENS

Professor Lemmens' research currently focuses on health law and policy and bioethics. In particular, he is interested in the legal, ethical and policy issues related to genetics, and in regulatory and ethical aspects of research involving humans. His work has focused on the protection of human research subjects; the use of genetic information; the protection against genetic discrimination; compassionate access to experimental drugs for people with AIDS; and mapping future genetic services in Ontario. As well, he has prepared reports for government commissions on new predictive genetic technologies and complementary/alternative health care, and serves on various national and provincial policy and ethics committees that deal with issues related to research and new medical technologies.

Professor Lemmens is an assistant professor in the Faculty of Law and the Faculty of Medicine, and is associated with the Centre for Innovation Law and Policy and with the Joint Centre for Bioethics. He holds law degrees from the Catholic University of Louvain (K.U.Leuven) and from McGill University (with a specialization in bioethics). He was the bioethicist of the Centre for Addiction and Mental Health (CAMH) from September 1997 to July 1999. Before joining the University of Toronto, Professor Lemmens was a researcher with the Centre de Recherche en Droit Public of the Université de Montréal and with the McGill Biomedical Ethics Unit.

Is Criminalization of Sex Selection in Canada Justified?

By Professor Bernard Dickens

THE URGE TO SELECT CHILDREN'S SEX IS NOT NEW. The Babylonian Talmud, a Jewish text completed towards the end of the fifth century of the Christian era, advises couples how to favour birth of either a male or a female child. In the mid-1970s, the development of amniocentesis alerted the public to the scientific potential for prenatal determination of fetal sex, and decriminalization of abortion has afforded choice on continuation of pregnancy. The more recent emergence of preimplantation genetic diagnosis (PGD) obviates resort to abortion, and improved techniques of sperm sorting and diagnosis permit creation of zygotes that will ensure the sex of a future child.

Growth of means to select the sex of future children has been accompanied by fear that they will be employed to favour births of sons, and so perpetuate devaluation of girl children and women's inferior family and social status. A reaction to this fear is the demand for legal and medical professional prohibition of sex selection techniques.

Legislation has been enacted in a number of countries to prohibit sex selection on non-medical grounds, such as the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 in India. In Canada, Bill C-13, first introduced in May 2002, proposes to make it a crime for any person, "for the purpose of creating a human being" knowingly to:

> perform any procedure or provide, prescribe or administer any thing that would ensure or increase the probability that an embryo will be of a particular sex, or that would identify the sex of an in vitro embryo, except to prevent, diagnose or treat a sex-linked disorder or disease (Clause 5(1)(e)).

In light of evidence from India, China, and other countries and cultures in which son-preference is apparent, many Canadian commentators have envisioned the use of techniques of sex selection only as reinforcing male-dominated sexism and women's subordination.

New reproductive techniques and technologies have always triggered fears of unnatural, harmful outcomes, social disruption and destruction of conventional families. In the mid-1960s, addressing human artificial insemination but with wider application, the U.S. gynaecologists Kleegman and Kaufman perceptively observed that:

> Any change in custom or practice in this emotionally-charged area has always elicited a response from established custom and law of horrified negation at first; then negation without horror; then slow and gradual curiosity, study, evaluation, and finally a very slow but steady acceptance. (Infertility in Women (1966) 178)

Adherents to conservative custom were initially, and in some cases are still, horrified at recognition of the potential for effective sex selection of future children, but they have been joined by some adherents to feminism. A dilemma posed by sex-selected abortion is that many feminists, not all of whom are women, consider choice in abortion to underpin women's moral agency and defence of self-determination. Susan Sherwin, a leading Canadian analyst, has observed that:

> Whatever the specific reasons are for abortion, most feminists believe that the women concerned are in the best position to judge whether abortion is the appropriate response to pregnancy. Because usually only the woman choosing abortion is properly situated to weigh all the relevant factors, most feminists resist attempts to offer general, abstract rules for determining when abortion is morally justified … Despite the diversity of opinion found among feminists on most other matters, most feminists agree that women must gain full control over their own reproductive lives if they are to free themselves from male dominance.

However, sex-selected abortion is seen as an instrument and consequence of male dominance that feminists are committed to oppose. It has been observed that "[m]any feminists view any efforts to plan the sex of future children as epitomising sexism" (Adrienne Asch and Gail Geller, "Feminism, Bioethics and Genetics," in Susan Wolf (ed.) Feminism and Bioethics (1996) 336). Opposition to sex selection by PGD and sperm sorting avoids the dilemma posed by sex-selected abortion, and affords opponents the support of conservative anti-abortion agencies, as well as of others committed to the elimination of the pro-male sexism that sex selection is seen to represent.

The stereotypical assumption that pro-male sexism is inherent in sex selection may be contradicted, however, by empirical studies. In Canada, summarizing their conclusion from a comprehensive sociological survey and public presentations, members of the Royal Commission on New Reproductive Technologies reported in 1993 that:

> The survey revealed that, contrary to what has been found in some other countries, a large majority of Canadians do not prefer children of one sex or the other. Many intervenors . . . assumed that Canadians have a pro-male bias with regard to family composition; we found that this assumption appears to be unfounded. (Final Report, Proceed with Care, 889)

Interest in sex determination was found to be very low, and concerned only with family balancing. The Commissioners reported regarding sex preferences that:

> Preferences were generally seen as unimportant, almost trivial. The survey showed that virtually all prospective parents want, and feel strongly about having, at least one child of each sex. (Ibid 890).

Nevertheless, advocating evidence-based medicine but apparently not evidence-based social policy, the Commissioners invoked perceived feminist values to recommend criminalization of the use of sex selection techniques, which is now proposed in Bill C-13.

This legislation is comparable to that enacted in India in 1994, but raises the issue of whether the social circumstances the legislation is intended to affect are comparable. The principle of justice requires that like cases be treated alike, and that different cases be treated with due recognition of the difference. It is as unjust to treat materially different cases alike as to treat alike cases differently. Male-dominance may be comparable in Canada and India, but the evidence is that sex preference between children is different.

There may be the same preference in some families for a first-born child to be male, but this preference, if offensive to equal priority and opportunity between the sexes, is addressed by permitting sex selection only for second or subsequent children, rather than by absolute prohibition. Under a limit of this nature, allowing sex selection for purposes of family balancing in Canada appears at least socially neutral and tolerable. Allowing family balancing avoids the harms of compelling a woman to repeat pregnancies until her goal of a family balanced by children of both sexes is achieved, and of conditioning abortion of a subsequent unplanned pregnancy that would be continued if it could be shown that the fetus is of the balancing sex.

Selection based on sex is clearly sexual, but not necessarily sexist. The analogy is with the contrast between racist and racial choice. A racially-based decision may be founded on acceptable preference, not attribution of inferior status to non-preferred races. For instance, a person's choice to marry a partner of his or her own race may be based on the comfort of common culture and the wish for racially compatible children, not hostility to miscegenation or the belief that races other than one's own are inferior. Similarly, the intention of a couple with a child of one sex to have another child of the other sex is a sexual but not a sexist preference. To suppose that any such choice is necessarily sexist is unjust, and to base criminal laws on such a supposition where the evidence is that an assumption of "a pro-male bias… appears to be unfounded" is both unjust and oppressive.

Whether the prohibition in Bill C-13 can survive Charter scrutiny is questionable. In 1988, Chief Justice Dickson observed that "Forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman's body and thus a [Charter] violation" (R. v. Morgentaler (1988), 44 D.L.R. (4th) 385, 402). Criminalizing a woman's priority and aspiration to balance her family by bearing a child of a particular sex may be equally so. Defending the criminal sanction under section 1 of the Charter, as "demonstrably justified" to resist son-preference, may be difficult, since the Royal Commission found the assumption of such a preference to be unfounded, rendering the prohibition unjustified in Canada. ■

PROFESSOR BERNARD DICKENS

Medical and health law, including bioethics, is the primary focus of Professor Bernard Dickens' research. His work has informed the debate on a wide range of contemporary issues, including reproductive and sexual health law, legal and ethical issues related to genetic testing, regulation of the use of humans in research, organ transplantation, euthanasia, and international developments in abortion law.

Professor Dickens has more than 300 publications, primarily in medical law and bioethics, and many international collaborations. He is legal articles editor of *The Journal of Law, Medicine and Ethics,* and on editorial boards of several medical law journals. In 1990-1991 he was president of the American Society of Law, Medicine and Ethics, and is currently a vice-president of the World Association for Medical Law. He has worked on several projects for the World Health Organization, and is currently involved in a WHO initiative on tuberculosis control.

Professor Dickens is a Professor of Medical Law at the Faculty, cross-appointed to the Faculty of Medicine and Joint Centre for Bioethics. After completing a Ph.D. degree in Law at the University of London and coming to the University of Toronto in 1974, Professor Dickens earned a higher doctorate (LL.D. degree) in Medical Jurisprudence.

By Professor Rebecca Cook

For Whom the Bell Tolls: The Injustice of Unsafe Motherhood

The English poet and cleric, John Donne, conveyed the communal values of humanity in his words:

> "[a]ny man's death diminishes me, because I am involved in mankind; and therefore never send to know for whom the [graveyard] bell tolls; it tolls for thee." (Devotions upon Emergent Occasions - Meditation no. 17, 1624)

The social sense of diminution has not been raised, however, by the persistent international incidence of maternal mortality. The World Health Organization estimates that each day over 1,400 women die of complications of pregnancy and childbirth, about 515,000 women every year worldwide. Further, at least 7 million women suffer serious health problems when they survive childbirth, and an additional estimated 50 million women suffer adverse health effects after childbirth. The estimated probability of pregnancy-related death faced by an average woman over her reproductive life-span is 1 in 8,700 in Canada, but 1 in 7 in Ethiopia. The Canadian average, as good as it is, conceals higher rates of pregnancy-related death and illness among aboriginal women, similar to the higher rates among marginalized populations in other countries.

Despite impressive efforts by the World Health Organization, the World Bank and, for example, the Society of Obstetricians and Gynecologists of Canada, rates in many regions are on the increase. One must ask why.

Causes of unsafe motherhood may in theory be separated into clinical and socio-legal causes, but in practice they often overlap. At the clinical level, the World Health Organization estimates that only 55% of women in the developing world are attended at delivery by a health worker who has received at least the minimum of necessary training. Many pregnant women suffer from other conditions, such as anemia, malaria and HIV/AIDS, that compromise their survival and health status associated with pregnancy and childbearing in general, and particularly when heavy blood loss occurs. The Society of Obstetricians and Gynecologists of Canada has developed an admirable partnership with its sister society in Uganda, for instance, to assess and implement a plan to reduce maternal mortality, but considerably more such collaboration is needed.

Socio-legal causes of unsafe motherhood include women's early marriage followed by premature and repeated pregnancy, which create medical circumstances inimical to survival and health. According to Jaya Sagade, a 2002 S.J.D. graduate of the Law Faculty currently teaching family law in Pune, India, adolescent childbearing is conditioned by social forces that require girls' early marriage, and fecundity. Her work explained that the Child Marriage Restraint Act in India sets the minimum age of marriage for girls at 18, but failure to implement this law results in 50% of women entering their first union before their eighteenth birthday, and almost 30% having their first child by age 18.

Kibrom Teklehaimanot, an LL.M. 2001 graduate of the Law Faculty from Eritrea, argues in his thesis, a portion of which is published in *Reproductive Health Matters*, that safe motherhood is jeopardized by laws and policies that criminalize medical procedures that only women require, such as abortion. In his country's region of the Horn of Africa, unsafe abortion is one of the leading causes of pregnancy-related death. He explains that there are two possible legal approaches to tackling this problem in Africa. One is to advocate for rights that protect individual autonomy, as have been achieved in Canada. The other is to advocate for the right to life of women, to ensure that they can survive pregnancy and childbirth, which he explains resonates more with African norms. He argues that under the African Charter on Human and Peoples' Rights, states have a duty to protect the right to life of women by ensuring availability of services that enhance their capacity to survive untimely pregnancies, including safe legal abortion, and preventive means such as contraception.

Questions remain about the utility of this type of human rights approach to ensure women's access to reproductive health care and maternity care. Poor women, who are at highest risk of pregnancy-related death, often have difficulties accessing courts and human rights tribunals. When they gain audience, judges are often reluctant to consider claims that might require reallocation of health budgets, preferring to defer to the budgetary and health service preferences of the executive branch of government. Nonetheless, Beatriz Galli, a 2002 LL.M. graduate of the Law Faculty from Brazil, argues in her thesis that a human rights approach is feasible in her country. She examines how the success of using the Brazilian courts to ensure access to care for those with HIV/AIDS can be applied to argue for

women's improved access to maternity care. She is currently advising the Maternal Mortality Committee of the State of Rio de Janiero on how to argue for just that.

In addition to courts, the Ombudsman office can provide another possible instrument to promote more equitable access to maternity care in health care systems. Eszter Kismodi, a 2002 LL.M. graduate of the Law Faculty from Hungary, explored how the recently instituted Hungarian Office of the Medical Ombudsman might ensure improved access to reproductive and maternity care of marginalized Roma women. The rates of maternal death and illness are considerably higher among the Roma women than the national average. Improving health interventions is a necessary but not sufficient condition to improving women's reproductive health. The World Health Organization recognizes that safe motherhood is not just a matter of medical care, but of social justice for women, and has hired Eszter as a Human Rights Officer to advance this goal.

Another reason for the continuing increase in pregnancy-related death in many regions is the difficulty many countries are having in implementing a comprehensive approach to reproductive and sexual health. This approach was agreed at both the United Nations' International Conference on Population and Development, held in Cairo in 1994, and the UN World Conference on Women, held in Beijing in 1995, and reaffirmed at their subsequent five year reviews in 1999 and 2000 respectively. This approach emphasizes a bottom-up, woman's empowerment strategy to protect reproductive and sexual health.

Canada can be especially proud of its leadership role in brokering consensus at these UN meetings through its governmental delegations, which included Lorna Marsden, former Chair of the Department of Sociology at the University of Toronto and current President of York University, and chief negotiators, such as Ruth Archibald, former Canadian High Commissioner in Sri Lanka and Valerie Raymond, current High Commissioner there, and Ross Hynes, a 1975 graduate of the Law Faculty. Many would agree that, but for such leadership, skill and determination, the Cairo and Beijing transformative agreements on the protection and promotion of reproductive health including safe motherhood would not have been forged.

The Cairo and Beijing agreements, which most countries agreed unreservedly to implement, both recognize that reproductive health failures reflected in unsafe motherhood raise concerns that transcend clinical medicine, and must be addressed as a matter of social justice. Like Canada, many countries are having difficulties in changing harmful and obstructive laws, implementing new laws and finding resources necessary to achieve improvement. Advancing social justice in women's health remains the binding commitment made in Cairo and Beijing.

Canada has yet to move beyond a piecemeal approach, such as urged by the Royal Commission on New Reproductive Technologies concerning biomedical responses to infertility, to develop and implement a comprehensive approach to reproductive health that emphasizes prevention and cure. Fissures in the Canadian reproductive health landscape have long been apparent. Canadian statistics show rising teenage unwanted pregnancy rates, unacceptably high abortion rates that could be reduced through improved access to contraception and to nonprescription emergency contraception, currently accessible only through some pharmacies in British Columbia and Quebec. Moreover, the shrinking pool of abortion providers and unavailability of early abortion methods, available at first in Europe and now in the US, are resulting in too many abortions being undertaken too late in pregnancy. Comprehensive approaches to reproductive health, such as those in the Netherlands and Scotland, can provide that abortions are obtained safely, early and rarely.

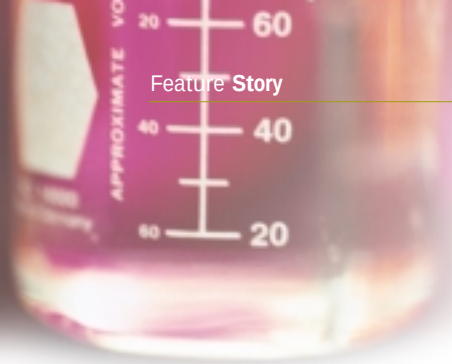
Renewed efforts are needed to ensure that our national commitments are kept. Sex and reproduction are natural parts of life. Women should not be disproportionately burdened in consequence of their sexuality and reproduction. Pregnant women in most countries with high rates of maternal mortality are legally compelled to give the resources of their bodies to the support of unborn life. In contrast, fathers are not legally compellable to provide, for instance, bone-marrow or blood donations for survival of persons their governments claim a right to protect, including their own children. Moreover, pregnant women who want to give birth safely to healthy children all too often lack access to the services and conditions to do so. Women's unjust legal, political, economic and social powerlessness explains much unsafe motherhood and maternal mortality and morbidity. Canada's leadership is needed to reduce how often "the bell tolls" for women, both at home and abroad. ■

PROFESSOR REBECCA COOK

Professor Rebecca J. Cook specializes in health law and ethics, and the international protection of human rights. Her research in women's health law has benefited families in Canada and abroad by advancing discussions related to reproductive health law, as well as women's health and bioethics, and gender, health and human rights.

In recognition of her contributions, Professor Cook was awarded the Certificate of Recognition for Outstanding Contribution to Women's Health by the International Federation of Gynecologists and Obstetricians, and the Ludwik and Estelle Jus Memorial Human Rights Prize by the U of T Alumni Association for lasting contributions in fighting against discrimination. She is a Fellow of the Royal Society of Canada, an occasional advisor to the Ford Foundation, the MacArthur Foundation, Profamilia Legal Services for Women and the World Health Organization, and has written and edited influential books, articles and reports on women's health law, international human rights and feminist ethics.

Professor Cook is Co-Director of the Faculty of Law's International Program on Reproductive and Sexual Health Law (with Professor Bernard Dickens) and Faculty Chair in International Human Rights; and holds positions in the Faculty of Medicine and the University of Toronto Joint Centre for Bioethics. Her degrees include: A.B. (Barnard), M.A. (Tufts), M.P.A. (Harvard), J.D. (Georgetown), LL.M. (Columbia), and J.S.D. (Columbia).



The Health Law and Policy Group: Meeting Emerging Challenges in Health

Greg Marchildon, Executive Director of the Royal Commission on the Future of Health Care in Canada (better known as the "Romanow Report"), spoke at the Faculty of Law at U of T days after the November release of the long-awaited report. Faculty and students from different departments across the campus, government policy-makers and medical professionals packed the Moot Court Room, eager to hear the report's prescription for how to make Canada's faltering health care system well again.

The timely event was part of the regular seminar series organized by members of the law school's Health Law and Policy (HLP) group, which draws leading thinkers from many disciplines to the Faculty to discuss everything from health care reform to genetics. As well, HLP group events such as the annual Health Law Day present cutting-edge research. Health Law Day 2002, held this past November at the Faculty, brought together prominent Canadian and U.S. experts to discuss pressing biomedical research issues.

The HLP group emerged initially from the research and teaching interests of Professors Rebecca J. Cook and Bernard Dickens, both distinguished scholars who are recognized internationally as leaders in their fields. It expanded when members of a new generation of scholars, Professors Sujit Choudhry, Colleen Flood and Trudo Lemmens, took up challenges emerging from shifts in health that are requiring innovative responses from lawyers about how to ensure rules and systems are fair and just.

The research of these scholars makes a profound impact on health laws and policies, both at home and internationally. They are also attracting emerging scholars, graduate students and research associates who will face the health issues of the future. For example, Duff Waring, who came to the Faculty of Law as a Research Associate to the Ontario Genomics Institute and the Stem Cell Genomics and Therapeutics Network, works closely with the group. He collaborates on projects relating to the regulation and review of gene therapy research with Prof. Lemmens, and assists him in organizing the recent biomedical research Health Law Day conference.


Duff Waring

Members of the HLP group work in an interdisciplinary environment, maintaining close ties to the Faculty's Centre for Innovation Law and Policy and other U of T academic departments, institutions and research centres such as the Joint Centre for Bioethics. They also cultivate links to government departments where policy is created and implemented. The group's members hold cross-appointments in departments including medicine, health policy, management and evaluation, public health sciences, medical genetics and microbiology, and psychiatry and assist in graduate supervision and assessment in these related departments. Members of the HLP group are also the frequent recipients of grants to conduct specialized research and grants that enable funding of research assistants and graduate students.

In addition to their research activities, the group's members have developed courses on various aspects of health law, and a specialized coursework intensive LLM. The curriculum reflects ongoing legal developments to prepare students to grapple with today's increasingly complex and international health law and policy issues. An exciting option for students is the newly created Canadian Institutes for Health Research (CIHR) training program in health law and policy. The first such program in

(l to r): Tom Archibald, Sheila Wildeman, Carole Pitfield and Lisa Forman

Canada, it aims to address research gaps and train new scholars in critical areas, including gender and health research. A six-year joint program run by three partner universities — Dalhousie University, U of T, and the University of Alberta — it involves mentors with unrivalled reputations in disciplines including law, anthropology, bioethics, economics, health policy, medicine, pharmacy, philosophy and political science. In 2002, 12 students took part in the program, led at U of T by Prof. Colleen Flood. It funds up to 10 graduate students a year in health law and policy across the three institutions. In addition to the CIHR scholarships, the Faculty also offers graduate scholarships for law students who wish to pursue relevant research projects in reproductive health law and international health law and genetics and the law.

Students in the CIHR training program can attend the HLP group's ongoing seminar series for credit, hearing speakers in law, philosophy, health services research, economics, management, political science, then writing reaction papers that respond to their work, and participating in debates. They may also take advantage of the internship and placement program working, for example, with the Ethics Division of Health Canada.

While in the HLP program, students work on unique projects, and later take their knowledge and put it to work in different parts of the world. For example, current graduate students are conducting research in many new areas. Tom Archibald (SJD), is working on issues at the intersection of labour law and health policy. Lisa Forman, also in the SJD program, is researching constitutional and human rights law governing health, focusing on access to essential medicines in the HIV/AIDS pandemic. Carole Pitfield, LLM is examining the Charter of Rights and Freedoms and health care rights. Sheila Wildeman (SJD), is studying the theory and practice of decision-making about committal and treatment of people deemed mentally ill.

The influence of Health Law and Policy group members also ripples out through the activities of their former students. For example, many from the Faculty of Law's International Program on Reproductive and Sexual Health Law are making a difference at influential organizations around the world. The program, co-directed by Prof. Rebecca J. Cook and Prof. Bernard Dickens, includes more than 65 full-time students, about half of whom come from 18 different countries.

For example, Maria Beatriz Bevilacqua of Brazil (LLM 02), a recent graduate, has been active in reproductive health law, and was recently appointed to the Rio de Janeiro state Maternal Mortality Committee as a representative of the Brazilian Feminist Network on Health and Reproductive Rights. She is working with the committee to apply human rights to reduce maternal deaths during childbirth, and is also executive coordinator of a new non-governmental organization called Advocacy: Litigation for Human Rights—among her many other activities. While at the Faculty, her research focused on major causes of maternal mortality in Brazil.

For further information about the HLP group and its activities, including Health Law Seminar Series (open to all without charge) and the Health Law Day, consult the law school's web site at http://www.law.utoronto.ca/healthlaw/index.htm





Special Report: People

In the following pages we provide a special report on faculty members who continue to receive national and international acclaim; three exceptional new scholars at the Law School; and alumni of great distinction.

Award-Winning Faculty

The Faculty has a well-earned international reputation for rigorous interdisciplinary scholarship and research excellence. Each year, contemporary thinkers from the law school are recognized for their valuable contributions to important legal and policy issues that affect all Canadians, as well as other societies around the world.

Below are recent honours that have been bestowed on Faculty members for their work.

Professor Patrick Macklem

BA (McGill), LL.B (Toronto), LL.M (Harvard)

Professor Patrick Macklem's recent book – *Indigenous Difference and the Constitution of Canada* – was awarded two prestigious awards in 2002: The Donald Smiley Prize for best book on Canadian government and politics; and the Harold Adams Innis Prize for best English-language book in the social sciences.

The Canadian Federation for the Humanities and Social Sciences selected Prof. Macklem's book as the 2001-2002 Harold Adams Innis Prize recipient over four other short-listed publications. The honour was commemorated at a ceremony at the National Library of Canada on Nov. 23, 2002.

The Canadian Political Science Association, in awarding Prof. Macklem the Donald Smiley Prize, described the book as "remarkable for its scope, its deep and thorough research in law, political science, philosophy and history, and its subtle and sophisticated argumentation. It is also distinguished by the author's unbending concern for justice, fairness and equality."

Prof. Macklem's book has been described as a sweeping account which explores the unique constitutional relationship between Aboriginal people and the Canadian state, why it exists, and what it entails in terms of Canadian constitutional order.

Professor Kent Roach

BA (Toronto), LL.B (Toronto), LL.M (Yale)

Earlier this year, Professor Kent Roach was inducted into the Royal Society of Canada for his outstanding contributions to the understanding of constitutional law and criminal justice. "His work on criminal justice has been innovative in its attention to the growing role of both crime victims and due process norms," noted the Royal Society's award citation. "His work is characterized by a desire to place issues in the broader perspectives provided by history, politics and attention to the entire legal process."

Professor Roach's teaching and research interests include the criminal process, the Charter of Rights and Freedoms, Aboriginal rights, the role of the courts, and anti-terrorism and the legal profession.

Professor Ayelet Shachar

BA (Tel Aviv), LL.B (Tel Aviv), LL.M (Yale), JSD (Yale)

Professor Ayelet Shachar's book, *Multicultural Jurisdictions: Cultural Differences and Women's Rights*, has been awarded the 2002 First Book Award by the Foundations of Political Theory section of the American Political Science Association (APSA). The award recognizes a scholar in the early stages of his or her career for a significant work in political theory or political philosophy.

Professor Shachar's book, described by APSA as "an artful combination of political theory and legal scholarship, of philosophical analysis and case study," focuses on the rights and vulnerabilities of minority members, especially women, in multicultural societies. Unique in its interdisciplinary and comparative approach, it advances current multiculturalist and feminist debate, providing fresh ideas about how to meet the challenge of squaring liberal governance with cultural difference in contemporary societies.

New Faculty Stars

Three new additions to the Faculty bring an extraordinary breadth of experience and richness to the law school – in areas ranging from Business law and Securities Regulation, to Aboriginal law, Constitutional law and Comparative Federalism. Their presence will serve to build upon the historical foundations of interdisciplinary scholarship now solidly entrenched in virtually every area of the Faculty's program.

Douglas Harris

By Prof. Martin Friedland, O.C., Q.C, University Professor

One of the future bright stars of the faculty will be Douglas Harris, now in his first year of full-time teaching. Doug was in my first-year criminal law class in 1989-90 and his perceptive interventions during class discussions stood out. I hired him to be my research assistant that summer and because of his background – he had a master's degree in English literature – he helped me edit a collection of essays on crime in literature by members of the English department that had been prepared for a seminar I had conducted at the law school. The first essay was by Northrop Frye on crime and sin in the Bible. Doug's first task was to edit and add footnotes to that article. Well, if Doug could successfully edit Northrop Frye there is little he could not do. Not surprisingly, he was the gold medalist on graduation, winning a string of prizes, including criminal law, civil procedure, commercial law, and constitutional law, just to mention subjects that begin with the letter C. Incidentally, he was also the gold medalist for English literature at Victoria College in 1987.

After clerking with Chief Justice Antonio Lamer, he joined Torys where he had spent the summers after second- and third-year law school. At Torys, he concentrated on a wide range of legal issues relating to knowledge-based businesses and business activities. Doug had always had an eye on an academic career and decided to go to Harvard to do postgraduate work. A couple of successful years teaching a course part-time at the faculty on "Advising A New Economy Business" probably helped him make the decision to move into the academic world. He and his wife Lisa and their two children, Rachel and Alan, spent two years in Cambridge, Massachusetts. Doug received his LL.M in 2000 and has completed the residence requirements for his Harvard SJD. Since returning, he has been acting as director of the U of T's Capital Markets Institute, teaching courses in business law and securities regulation, and finishing the research and writing for his doctorate. Readers of Nexus may have seen some publicity about a report he prepared last October for the Toronto Stock Exchange on methods of achieving effective securities regulation. Not bad for his second month into full-time teaching. There is a lot more to come.

Darlene Johnston

By Prof. Patrick Macklem

The Faculty is very fortunate to have Darlene Johnston joining us as a full-time Assistant Professor. Since receiving her LL.B. from the Faculty in 1986, Darlene taught for several years at the University of Ottawa Faculty of Law. In 1995 she stepped down from her academic position to coordinate land claims research and litigation for her community, the Chippewas of Nawash First Nation. Darlene's work contributed to the judicial recognition of her people's treaty right to the commercial fishery and to the recovery and protection of burial grounds and other culturally-significant sites within their traditional territory. She returned to the University of Toronto in 2001 to complete a Masters degree in law. Her thesis and her current research focus on the relationship between totemic identity, territoriality and governance. Darlene is teaching Property Law, Aboriginal Peoples and Canadian Law, and an advanced seminar on comparative law of the Great Lakes region in the early encounter period. Darlene is an exceptional teacher, colleague, and scholar, and her presence at the Faculty dramatically deepens our commitment to interdisciplinary and inter-cultural legal education.

Jean-François Gaudreault-Desbiens

By Prof. David Schneiderman

We are fortunate to welcome Professor Jean-François Gaudreault-Desbiens into the teaching ranks of the law school. One of Canada's emerging leaders in the field of constitutional law, Professor Gaudreault-Desbiens took up residence at the University of Toronto after teaching at McGill University's Faculty of Law since 1997.

Professor Gaudreault-Desbiens was born and raised in Quebec City, went to law school at Laval University, and subsequently practised law there for a few years. Forsaking legal practice for the academy, he secured a Master of Laws from Laval University and then a doctorate from the University of Ottawa.

He arrives with a substantial teaching and publication record. Two books have been published in the French language, one entitled Freedom of Expression Between Art and Law (1996) and the other on Sex and the Law: On Catherine MacKinnon's Legal Feminism (2001). His published journal articles explore themes of identity, culture, and constitutionalism. Much of this work aims to identify obstacles to constitutional reconciliation between English-Canada, Quebec, and First Nations, seeking to overcome constitutional misunderstanding while acknowledging pluralism and diversity.

Prof. Gaudreault-Desbiens will contribute immensely to our teaching offerings in constitutional law, comparative federalism, and the civil law. We are delighted that he has agreed to venture deep into the heart of Upper Canada to make his mark on Canadian legal education.

(l to r): Hubert Stitt, Dean Daniels, Erminia R. Bossio and Raj Anand
(Absent: Lianne J. Tysowski and Kirby Chown)

Law School Community Members Lauded with 2002 Arbor Awards

Established in 1989, the Arbor Award recognizes outstanding service of University of Toronto alumni volunteers. This year, in a special ceremony, five law alumni were honoured for their dedication and ongoing contribution to the Faculty.

Raj K. Anand ('78)

Former Chief Commissioner of the Ontario Human Rights Commission (1988-89), Anand is a distinguished practitioner in the areas of civil litigation, professional negligence and discipline, human rights, constitutional and administrative law, and labour relations. A Dean's Key recipient in his graduating year, Anand's involvement at the law school has taken many forms since his graduation. He has been on the Law Alumni Association since 1995 and is currently Treasurer of the council. He has also been a speaker in the Dean's Leadership Luncheon series, a program that invites prominent alumni to address small groups of students in an informal setting about a wide spectrum of career options. More recently, he participated with other alumni, in performing an external assessment of the law school to examine the performance of the Faculty in relation to its academic mission.

Kirby Chown ('79)

Through her service as member and current President of the Law Alumni Association (LAA) Council, Kirby Chown has provided valuable input in shaping the direction of the Faculty of Law, most recently evidenced by her support for the Faculty's five-year plan, "Strengthening Our Community - The Report of the Task Force on the Future of the Faculty of Law." With her characteristic leadership, Chown spearheaded a process last year to ensure that all members of the LAA Council were thoroughly informed about the details of the law school's future plans. In addition to serving as an LAA Council member since 1994, Kirby has also been instrumental in securing her firm's commitment to establish the McCarthy Tétrault Classroom at the Faculty, a state-of-the-art electronic classroom that provides outstanding facilities and communications capabilities for law students.

Hubert J. Stitt, Q.C. ('57)

The epitome of the lawyer-statesman, Bert Stitt has sought to advance the law and to educate others in the profession. A pioneer in the field of international law, Bert established Baker & McKenzie in 1962, the first Canadian law firm specializing in international commercial transactions. He introduced an international law course at the Faculty and invited leading foreign lawyers to speak to his classes about foreign legal regimes. As a dedicated and valuable member of the law school community, Bert serves on the Law Alumni Association Council and in the past has devoted considerable time and energy to the Faculty's 50th Anniversary Committee, where his activities ranged from planning the anniversary gala to flipping pancakes at the anniversary breakfast.

Lianne J. Tysowski ('94) and Erminia R. Bossio ('96)

Lianne Tysowski and Erminia Bossio are two outstanding alumni who have established their legal careers in Calgary following their graduation from the Faculty of Law. Both are key members of the Calgary chapter of the Law Alumni Association and, working with Molly Naber-Sykes ('83), were instrumental in organizing the 2001 Calgary alumni event in October 2001, where more than 30 alumni and their guests shared a memorable evening with former Dean and Supreme Court Justice Frank Iacobucci. The success of the regional chapters of the Law Alumni Association rests in large measure on the commitment of local alumni who maintain strong ties both with the Faculty and with their colleagues in their home communities. The Calgary chapter is one of the strongest LAA committees thanks to the dedicated support of Lianne Tysowski and Erminia Bossio.

Edward M. Roberts, Q.C. ('64) Appointed Lieutenant-Governor of Newfoundland and Labrador

Senior partner, politician, philanthropist and historian, the Hon. Edward M. Roberts, Q.C., a distinguished 1964 graduate of the Faculty of Law, was installed on Nov. 1, 2002 as Newfoundland and Labrador's 11th lieutenant-governor.

The appointment follows an esteemed career that spans legal and political fields. Called to the Bar of Newfoundland in 1965, a year after earning his LL.B. from the Faculty of Law, Roberts's attention soon shifted to politics and he became a member of the Newfoundland House of Assembly from 1966 to 1985, holding such high profile government posts as Minister of Public Welfare and Minister of Health.

From 1972 to 1977, Roberts was leader of the official opposition in the House of Assembly, and in 1978 joined the firm of Halley, Hickman, Hunt and Adams. He returned to the House after winning a by-election in 1992, and was re-elected again in 1993. From 1992 through to his departure from politics in 1996, Roberts served as the Minister of Justice, the Attorney General and Government House Leader.

Among his numerous achievements, Roberts was also named Queen's Counsel in 1979 and Master of the Supreme Court of Newfoundland in 1989. He was also Newfoundland's ministerial representative in the process that resulted in the Charlottetown Accord. Since 1997, Roberts has been with the firm Patterson, Palmer in St. John's.

Outside his political and legal career, Roberts has been lauded for his voluntary and philanthropic endeavours. He served, successively, as the Chairman of the Board of Trustees of the Waterford and General Hospitals in St. John's from 1990 to 1992, and since 1997 he has served as Chairman of the Board of Regents of Memorial University in Newfoundland.

U of T Governing Council Adds Law Alumnus Jack Petch, Q.C. ('63)

Jack Petch, a law school graduate from the class of '63, was recently appointed to the Governing Council of the University of Toronto. Petch, who has served the university and the law school for a number of years, is past president and an active participant in the Law Alumni Association, and in 1990, received an Arbor Award in recognition of his outstanding volunteer service to the Faculty of Law.

One of Canada's leading corporate/mergers and acquisitions lawyers, Petch is senior partner and vice-chair of Osler, Hoskin & Harcourt, LLP, in Toronto, and works with many of Canada's top corporations. He also acts as a personal advisor to senior members of the business community, and serves as director/officer of various public, private and pension fund corporations. He is chairman of the board of directors of St. Michael's Hospital, a major Toronto teaching and research centre with an annual budget of $380 million that is affiliated with the University of Toronto.

In Memoriam: John Stransman ('77)

The Faculty of Law, the university and the entire legal community lost a gifted lawyer and friend last April when John Stransman, who graduated from the law school in 1977, passed away after a battle with cancer.

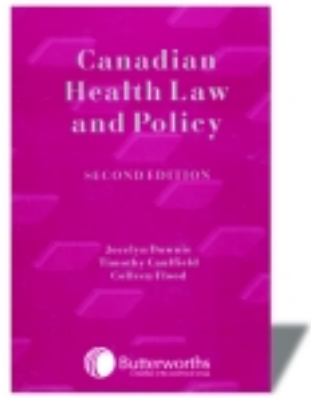
Stransman, 49, was one of Canada's top corporate lawyers. Known as a soft-spoken negotiator who excelled at bringing opponents together to resolve complex issues, he guided many of the country's largest companies through high-profile takeover and securities cases as a senior partner with Toronto-based law firm Stikeman Elliott.

Advising MacMillan Bloedel Ltd. when it was purchased by Weyerhaeuser Co., and helping Air Canada ward off a hostile takeover bid by Onex Corp., are just two of his accomplishments. Stransman was a leader in bringing about a settlement between Royal Bank of Canada and the Ontario Securities Commission over the high-closing scandal at RT Capital Management Inc. in 2000.

"The death of John Stransman was a great loss to the law school and to the legal community," says Ronald J. Daniels, dean of U of T's Faculty of Law. "His contributions to the profession and his devotion to his clients were truly extraordinary."

Stransman joined Stikeman Elliott in 1980 after obtaining his law degree from U of T, and a Masters of Law from Harvard. He is survived by his wife Anne Rogers and their three children, Peter, Stephen and Lindsay.

Faculty Publications



RECHARACTERIZING RESTRUCTURING – LAW, DISTRIBUTION AND GENDER IN MARKET REFORM

Kerry Rittich

ISBN: 90-411-1935-3
Suggested retail price: $110.00 (USD)

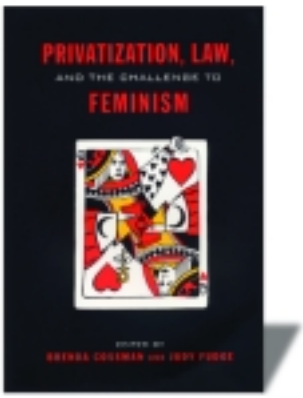
From the publisher: In the last decade, market-centered economic reforms have been implemented in a range of developing and transitional countries under the auspices of the international financial institutions. Whether they deliver the promised prosperity, they appear to be associated with widening economic inequality as well as disadvantage for particular social groups, among them women and workers. This book argues that such effects are neither temporary nor accidental. Instead, efforts to promote growth through greater efficiency inevitably engage distributive concerns. Change in the status of different groups is connected to the process of legal and institutional reform.

CANADIAN HEALTH LAW AND POLICY (2nd Edition)

Edited by Jocelyn Downie, Timothy Caulfield & Colleen Flood

ISBN: 0 433 43812-6
Suggested retail price: $89.00

From the publisher: This book provides concise surveys of the current state of law and practice in each of the significant subject areas of health law. The 2nd Edition incorporates the latest developments in legislation, case law, scientific advances, as well as the latest trends in the funding and administration of Medicare. New material and issues addressed include: the civil liability of physicians under Quebec law; privacy legislation and its effect on hospitals and health care providers; political and economic forces such as funding level changes, hospital closures, and emigration of physicians and nurses; private financing approaches; federal government proposals to limit or prohibit assisted human reproduction technologies, such as cloning; Supreme Court of Canada's decisions in Latimer (euthanasia) and Dobson (liability of mother in tort to unborn fetus); and, the legal implications of such advances in medical science as the mapping of the human genome, embryo and stem cell research, and cloning.



PRIVATIZATION, LAW, AND THE CHALLENGE TO FEMINISM

Edited by Brenda Cossman and Judy Fudge

ISBN: 0802036996 (cloth); 0802085091 (paper)
Suggested retail price: $75 (cloth); $35 (paper)

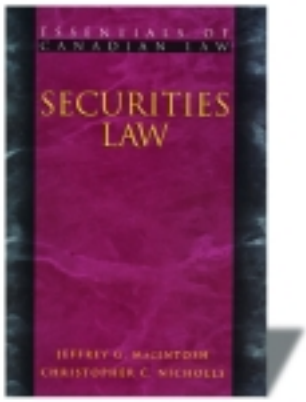
From the publisher: Privatization has caused a large reconfiguration of the relations between state, market and family in the late 20th and the early 21st centuries, all of which has had a profound effect on the lives of women. This collection of essays addresses this timely issue by examining eight case studies on the role of law in various arenas such as fiscal and labour market policy, family and immigration law, and laws designed to regulate health services and to prohibit child prostitution. Starting from the shared assumption that privatization signals a transition from welfare state to neo-liberal state, the authors illustrate the role of law in this process, and its impact on women and on the gender order. In doing so, the contributors lay bare the complex interplay between a globalized political economy, social reproduction and legal regulation, providing an important contribution to feminist political theory and legal theory. Of relevance to political science and law practitioners, scholars and students – especially those interested in the areas of public policy and the state - these essays contribute to debates about gender and will attract a wide feminist audience.

DIVERSITY AND SELF-DETERMINATION IN INTERNATIONAL LAW

Karen Knop

ISBN: 0521781787
Suggested Retail Price: $135

From the publisher: The emergence of new states and independence movements after the Cold War has intensified the long-standing disagreement among international lawyers over the right of self-determination, especially the right of secession. Knop shifts the discussion from the articulation of the right to its interpretation. She argues that the practice of interpretation involves and illuminates a problem of diversity raised by the exclusion of many of the groups that self-determination most affects. Distinguishing different types of exclusion and the relationships between them reveals the deep structures, biases and stakes in the decisions and scholarship on self-determination. Knop's analysis also reveals that the leading cases have grappled with these embedded inequalities. Challenges by colonies, ethnic nations, indigenous peoples, women and others to the gender and cultural biases of international law emerge as integral to the interpretation of self-determination historically, as do attempts by judges and other institutional interpreters to meet these challenges.

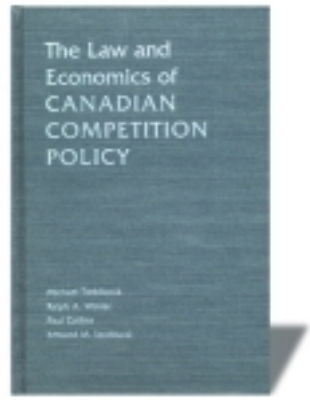


SECURITIES LAW

Jeffrey MacIntosh and Christopher Nicholls

ISBN: 1-55221-020-0
Suggested retail price: $49.95

From the publisher: Canadian securities law comprises a unique mix of enduring basic principles and constantly-changing technical details. This new book, by Jeffrey MacIntosh and Christopher Nicholls, provides a solid introduction to both. The book includes a survey of all of the "usual" securities law topics — including basic definitions, the public and exempt markets for securities, insider trading, continuous disclosure and takeover and issuer bids. But the discussion of these and other specific topics is interwoven with a careful consideration of larger public policy issues. The authors thus help guide the reader through the complex labyrinth of modern securities regulation by constantly highlighting the unifying thread of fundamental principles.

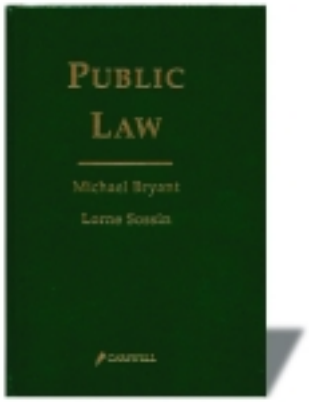


THE LAW AND ECONOMICS OF CANADIAN COMPETITION POLICY

Michael J. Trebilcock, Ralph A. Winter, Paul Collins, and Edward Iacobucci

ISBN: 0802035574
Suggested retail price: $150.00

From the publisher: Offering a cross-disciplinary approach to scholarship in law and economics, this work evaluates the major doctrines of Canadian competition policy. Topics include: Canadian competition policy in an historical context; basic economic concepts; multi-firm conduct; horizontal agreements; the merger review process; predatory pricing and price discrimination; vertical restraints; intra-brand competition; inter-brand competition; abuse of dominance; competition policy and intellectual property rights; competition policy and trade policy; competition policy and regulated industries; and enforcement. The treatment of each topic is organized first around a discussion of the relevant body (or bodies) of economic theory and then the pertinent bodies of legal doctrine, including case law. Each chapter contains a critique of existing law in light of contemporary economic theory. This also offers an up-to-date integrated analysis of economic theory and legal doctrine in the context of Canadian competition policy.

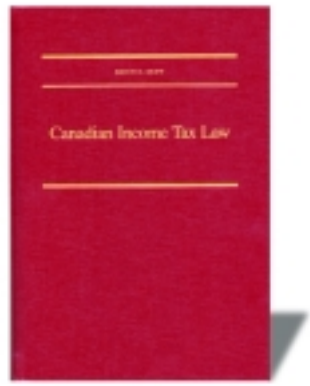


PUBLIC LAW

Lorne Sossin and Michael Bryant

ISBN: 0-459-24031-5
Suggested retail price: $85

From the publisher: Public Law provides comprehensive coverage, in one volume, of topics that affect the practice of every lawyer and anyone studying the law: Charter litigation, federalism, Aboriginal law, public international law and administrative law. For practitioners with cursory knowledge of public law, experts wishing a refresher, and students requiring an overview, Public Law permits quick reference, without having to access the many treatises for each of the public law subjects covered. Public Law also serves as an excellent introduction to the core doctrines of public law for students and non-lawyers.

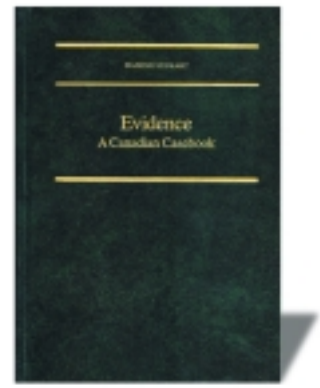


CANADIAN INCOME TAX LAW: CASES, TEXT AND MATERIALS

David G. Duff

ISBN: 1-55239-005-5
Suggested retail price: $95.00 (student); $150.00 (practitioner)

From the publisher: Although developed primarily for use in a basic course on Canadian income tax law, the book is of value not only to students and tax teachers, but also to tax lawyers and accountants, tax administrators, judges, policy makers, and anyone else interested in learning about Canadian income tax law. In writing the book, Prof. Duff's aim has been to make the study of Canadian income tax law both interesting and accessible, without avoiding any of the technical detail that is necessarily involved in this field of law. By combining the features of a textbook and a casebook and devoting attention both to the text of the Income Tax Act and to cases in which this text has been interpreted and applied, the book is intended to provide a basis for a critical understanding of the law and policy of Canadian income taxation.



EVIDENCE: A CANADIAN CASEBOOK

Hamish Stewart

ISBN: 1-55239-065-9/2002 (hardcover)
Suggested retail price: $92.00 Student/$125.00 Practitioner

From the publisher: In most law school courses, the "facts" of the cases studied are taken as given: they are presented as found by a trial court or tribunal or as understood by an appellate court. But in most contested cases, the parties will offer the tribunal different versions of the facts. The law of evidence establishes rules and principles governing the means that the parties can use to try to establish their versions of the facts, and the reasoning that the trier of fact is permitted to engage in while determining the facts. Topics covered include: sources and goals of evidence law; basic concepts of evidence law (e.g., relevancy, probative value, prejudicial effect); traditional exclusionary rules (e.g., the rule against hearsay and its exceptions, the rules governing character evidence, the common law confessions rule); exclusion of evidence under the Canadian Charter of Rights and Freedoms; the protection of confidential information via privilege and other doctrines; and several other aspects of proof and procedure.

Featured Journals

The Faculty is proud to announce the launch of two new student-initiated journals - the Journal of Law & Equality and the Indigenous Law Journal.

The **JOURNAL OF LAW & EQUALITY (JLE)** promotes critical and informed debate on issues of equality, with special emphasis on the Canadian context. The JLE publishes research articles, case comments, notes, and book reviews by a diverse group of commentators from across Canada, including professors, practitioners, and students.

The first issue, released in the fall 2002, contained pieces by Chief Justice Beverley McLachlin titled, "Racism and the Law: The Canadian Experience," as well as articles such as "Welfare Rights in a Modern State: A Theoretical Approach to Gosselin v. Quebec," "The Emperor's New Clothes? Female Genital Mutilation and the Immigration and Refugee Board," and "A Constitution for the Disabled or a Disabled Constitution? Toward a New Approach to Disability for the Purposes of Section 15(1)."

The upcoming spring 2003 issue will include a symposium on the topic of disability.

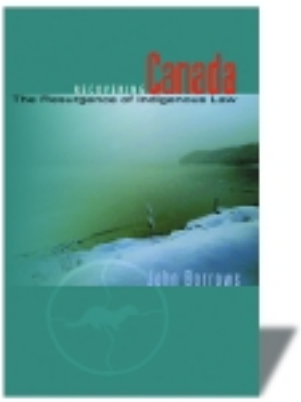
The **INDIGENOUS LAW JOURNAL** boasts of being the first Canadian legal journal to exclusively publish articles regarding indigenous legal issues. The journal is dedicated to developing dialogue and scholarship in the field of indigenous legal issues both in Canada and internationally.

The journal publishes articles, notes, case comments and reviews in all areas of study pertaining to both the laws of indigenous peoples and the law as it affects indigenous peoples. Submissions from indigenous perspectives are particularly encouraged, as are submissions regarding or from within indigenous legal systems.

The first edition of the Indigenous Law Journal was distributed in late summer. You can read abstracts, author biographies, and the full text of a foreword by University of Victoria law professor John Borrows by visiting the Faculty's Web site (www.law.utoronto.ca) and clicking on "Journals and Publications."

For more information about these two new student journals, or to read portions of the inaugural editions, visit the Faculty's Web site at www.law.utoronto.ca.

New Alumni Publications



RECOVERING CANADA: THE RESURGENCE OF INDIGENOUS LAW

John Borrows – Class of '91

ISBN: 0802036791 (cloth); 0802085016 (paperback)
Suggested retail price: $65 (cloth); $29.95 (paperback)

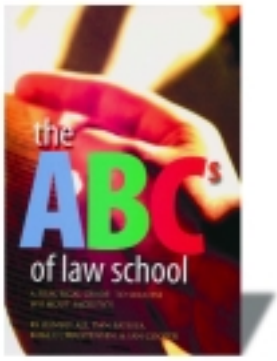
From the publisher: In this examination of the continued existence and application of indigenous legal values, John Borrows suggests how First Nations laws could be applied by Canadian courts, and tempers this by pointing out the many difficulties that would occur if the courts attempted to follow such an approach. By contrasting and comparing Aboriginal stories and Canadian case law, and interweaving political commentary, Borrows argues that there is a better way to constitute Aboriginal/Crown relations in Canada. He suggests that the application of indigenous legal perspectives to a broad spectrum of issues that confront us as humans will help Canada recover from its colonial past, and help indigenous people recover their country. Borrows concludes by demonstrating how indigenous peoples' law could be more fully and consciously integrated with Canadian law to produce a society where two world views can co-exist and a different vision of the Canadian constitution and citizenship can be created.

COPYRIGHT LAW IN CANADA

Sunny Handa – Class of '92

ISBN: 0 433 43840-1
Suggested Retail Price: $145

From the publisher: Written by an experienced copyright practitioner and legal academic, this book covers a range of copyright principles and doctrine. From jurisdictional issues to industrial design, this work serves as a road map for navigating the law both in a Canadian and a comparative law context. Topics covered include: rights encompassed by copyright; protection afforded various works; originality and fixation; term and ownership of copyright; fair dealing and fair use; moral rights; collective administration of copyright; transferring rights; copyright infringement and remedies; and, defences and exceptions to infringement. *Copyright Law in Canada* includes a wide-ranging examination of international copyright law that is especially relevant in an era of increasing harmonization and globalization.

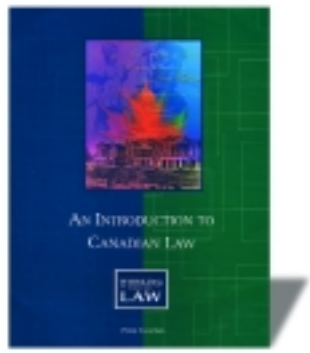


THE ABCS OF LAW SCHOOL, A PRACTICAL GUIDE TO SUCCESS WITHOUT SACRIFICE

Ramsey Ali, Dan Batista, Koker Christensen, Ian Cooper – All from Class of '01

ISBN: 1-55221-065-0
Suggested retail price: $26.95

From the publisher: Do you ever wish you could go back in time and get a second kick at the can? Many law school graduates do. Why? Because they could have done better with less work, if only they knew then what they know now. Law school can and should be engaging, rewarding and manageable. Written by four authors who graduated from the Faculty in 2001, this book provides information about how to get the most out of law school the first time around. In it, you will find a systematic guide to law school success — one that entertains as it informs. This book is essential reading for any aspiring law student.

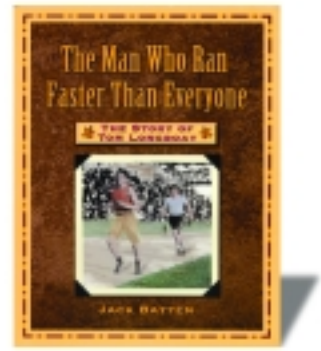


AN INTRODUCTION TO CANADIAN LAW

Philip J. Sworden – Class of '76

ISBN: 1-55239-069-1
Suggested Retail Price: $45.00

This book, written primarily for college students taking legal programs, provides a highly readable introduction to the study of Canadian law. It provides an historical and current analysis of the subject, outlining, for example, the background evolution of the common law and civil law legal systems and their introduction to this country, along with discussing contemporary issues like access to justice and law reform. Divided into 14 chapters, the book presents an overview of Canadian law for college students who have only one semester to study this topic.



THE MAN WHO RAN FASTER THAN EVERYONE: THE STORY OF TOM LONGBOAT

Jack Batten – Class of '57

ISBN: ISBN 0-8876-507-6
Suggested Retail Price: $16.99

From the publisher: Jack Batten is a well-known author, journalist, reviewer and radio personality. He has written thirty books on subjects that include biography, crime fiction, law and court cases, and sports. This book is about Tom Longboat, a member of the Onondaga Nation who was born on the Six Nations reserve in Ohsweken, near Brantford, Ontario. Longboat went on to become one of the world's best runners, this despite poverty, poor training, and prejudice. He won the Boston Marathon in 1907 and ran in the Olympic Marathon in 1908. Longboat was one of the best-known people of his day, and the most prominent member of the Six Nations. Throughout his career he raced against opponents, as well as rumors of illegal running activities. Throughout, he maintained his dignity, and his achievements inspire people who understand the great pleasure of running, and running fast. Chosen as the winner of the 2002 Norma Fleck Award for Children's Non-fiction on Sept. 3, 2002. The $10,000 Norma Fleck Award is the largest of its kind in Canadian children's books.

Great Performances: Professor Ralph Scane Lights Up the Law School Stage

By Kirsteen MacLeod

Asked what makes an excellent teacher, Professor Ralph Scane (Emeritus) says it all comes down to presentation. "Good teachers have a bit in common with good actors–a certain amount of timing; a certain amount of self-confidence; the ability to connect with people." Add to that humour, devotion to the audience, and a penchant for using props, and you have a description of Prof. Scane himself.

Prof. Scane's most infamous prop is his gift-wrapped green box with the yellow bow. On the first day of property law class, it would be placed between two students, a little closer to one than to the other. He'd begin the lesson by exploring who the class thought the box belonged to, and why. Then over time, he'd use it to introduce all the basic concepts to be developed in the course. "The older students used to warn the first-years ahead of time, 'Whatever you do, don't sit close to the box!" Prof. Scane recalls, laughing. "I'm a very didactic teacher–I like to try and put a little flesh on the bones."

Today, the box sits in Prof. Scane's office, a momento of his favourite role. "I don't see myself as a professor," he cautions. "I see myself as a lawyer running a very boutique practice–teaching." It's a part that he's excelled at for 38 years–35 of them at U of T's law school, where, despite his official retirement in 1995, Prof. Scane has been teaching occasional courses. "I get my kicks in the classroom. You really have to work at it, and think deeply to make a course rise above the level of the superficial, but it's satisfying to see students you know will make good lawyers, and think 'I can be part of that.'"

Prof. Scane's law career began when he was called to the Bar in 1957, after attending the Osgoode Hall Law School. He then worked in private practice for five years. "I was working chiefly in litigation as a fender-bender person," he recalls. "Then by a sort of a fluke, I ended up joining the faculty at UWO." It happened after the firm he worked for was taken over, and it became apparent that he and the new partners were mutually bemused. He got a call from a former colleague about a job at the University of Western Ontario in London, Ont., and jumped at the chance to start teaching wills and property law there in 1962. "I'd never looked at a will–well, maybe one-and I knew nothing about property law. To the extent that they wanted a housepainter, I could have done that too," he says.

Two years later, in 1964, Prof. Scane left UWO and returned to private practice in Toronto, where he met Professor Dick Risk of U of T's law school. "I think I told him that I was playing with the idea of returning to teaching full-time," Prof. Scane says. "He probably said something, because shortly after Dean Wright died, Ronald St. John MacDonald left Western to take up the deanship, and he called me."

Prof. Scane was hired in 1967 as an associate professor at U of T's law school, and promoted to professor in 1969. He taught Property, Restitution, Trusts and Wills, contributed numerous journal articles in these areas, and served as associate dean in the 70s. He quickly became a favourite among students.

Professor Ralph Scane

Professor Scane's most infamous prop is his gift-wrapped green box with the yellow bow. On the first day of property law class, it would be placed between two students…

"Ralph is a wonderful and articulate teacher, and one of the warmest professors I ever had," says Madam Justice Rosalie Silberman Abella of the Court of Appeal for Ontario. Justice Abella, who graduated in the Class of '70, says he provided much-needed support when her father was dying of cancer during her third year of law school. "I remember Ralph Scane literally forcing me to have an articling interview he had set up with Dick Risk's father's firm so my father would not die thinking I wouldn't finish law school. I honestly don't know how I would have gotten through the year without his encouragement."

While he is known to care deeply for his students, Prof. Scane has a reputation for being very exacting. "He was rigourous," confirms Justice Abella. "But you learn from rigour, and Ralph was never mean." The Honourable Mr. Justice Robert Sharpe ('70) of the Superior Court of Justice (Ontario), who was dean of the law school from 1990-1995, is also familiar with this quality. "Scane gave me my hardest law school examination," he recalls. "Memorable to this day are the instructions for the ill-fated exam in wills and trusts. It was a fact situation that raised every conceivable wills and trusts issue, followed by, 'Draft the will.' "

This is a painful experience it's likely many students have shared: at one point, Prof. Scane recalls, his students nicknamed him Mr. D. "I was called Mr. D for the reason I gave Ds, for the reason it was good for their souls," he mock-thunders, then laughs. Asked how he managed to win a University of Toronto teaching award in 1984 when he is known to be so stringent and teaches subjects most students consider far less sexy than criminal or constitutional law, for instance, Prof. Scane shrugs. "I have an enthusiasm for the subject – I guess they thought, maybe there's something in it if this old geezer can get so worked up about it."

Prof. David Beatty, who joined the faculty shortly after Prof. Scane in the 60s, says the students loved him "because he really worked hard to make sure they understood, and to make it as interesting as possible, and they saw that. He devoted most of his energy to teaching, and to the day-to-day life of his students." Prof. Beatty adds: "My sense of him over 30 years is that he'd do anything for the law school. He's a frank, loyal and dedicated guy. He'd roll up his sleeves to get the job done."

In fact, Prof. Beatty's most distinct memory of Prof. Scane is with his sleeves rolled up, grappling with the old offset press professors used to run off their own casebooks. "Every week something would go wrong at the last minute. There was a big vat of ink and it used to go everywhere. There he'd be in a white lab coat-all the faculty taught in suits and ties at the time, and he perhaps more than the others tended to dress as a professional lawyer-up to his elbows, his head in the printing machine. Even in a casebook crisis, he'd have a chortle, and somehow manage to keep his suit clean," Prof. Beatty recalls.

Prof. Scane also remembers that lab coat, which was given to him by his assistant. "Her husband was a forensic doctor, and she got him to swipe one for me to help keep me clean," he says. This was during the time that he was associate dean, and in those days, he says, the job was purely administrative. "I'd have to walk up all the stairs to the dusty attic of Falconer every time we ran out of paper, and it was one of my jobs to keep that damn press running," he says, shaking his head. "I had to be a real quick-change artist to get to class looking like a lawyer."

Prof. Dick Risk, asked to describe his long-time colleague, says: "He is an extremely open, friendly person with a substantial sense of humour. He cares a lot about lawyering, and teaching students to become good lawyers, and was an extremely popular and gregarious professor. I'd say that his primary accomplishment would be teaching a generation of lawyers property and trusts and wills."

Prof. Risk adds that on the surface Prof. Scane could seem to be "a bit of a curmudgeon, but his bark was worse than his bite." Calling him "a painfully straightforward man," he notes that Prof. Scane "has high standards, which he didn't hesitate to apply."

"A teacher affects eternity; he can never tell where his influence stops."

- Henry Brooks Adams

Prof. Martin Friedland was dean of the law school when Prof. Scane was associate dean, and says that he is a wonderful colleague. "For more than 30 years, Ralph has been one of the most valued members of the faculty," he says. "His teaching ability is legendary, as is his good-natured wit." What is perhaps less widely known, Prof. Friedland adds, are his great contributions to administration. "All deans and former deans can attest to this. Moreover, Ralph was the first associate dean of the faculty, and in the early 1970s he helped us acquire Falconer Hall, and also helped institute the small-group program."

In addition to his contributions as a teacher and administrator, Prof. Scane's colleagues describe him as a team player who fostered a sense of community at the law school. "People play different roles at the law school, and he was one of the guys who was the glue, who kept things together," says Prof. Beatty.

His university service reflects this community-minded attitude, and not surprisingly, his current activities involve issues of great consequence to students: he serves as a member of the academic appeals committee, and has chaired dozens of appeal hearings. Recently, he was appointed as the first Senior Chair of the Academic Appeals Committee.

Greig Henderson, a U of T English professor, says Prof. Scane has the unenviable task of teaching lay colleagues to make legally correct decisions in complex, emotional cases that can be full of anguish and suffering for those involved. "The genius of Ralph is that he has an incredibly astute legal mind, and can find chronology and causality, and see the issue in a sea of particulars."

As well, says Prof. Henderson, he admires Prof. Scane's patience with unrepresented students. "He is especially sensitive to them. He is very tolerant, and realizes they have different needs than people who come in with lawyers."

Remembering a particularly difficult appeal in which tempers were high and campus police were posted outside the door, Prof. Henderson says Prof. Scane presided calmly. "Ralph handled it brilliantly. He is willing to let the evidence stand for itself. He doesn't seem to let his emotions get in the way. His primary investment is in due process and in allowing the complainant to have his or her say." He can also be very tough-minded when he needs to be, Prof. Henderson says, and if he's angry, he lets you know. "For instance, he can be very stringent in imposing the rules on counsel, who should know better than to break them. He is not a pushover by any means–he can be very firm."

Looking back on a 34-year career at U of T's law school, Prof. Scane, asked what he considers his biggest achievement, replies, "At the risk of being glib, survival!" He says he is proud of "saying things worth saying" in his published research, and of his role in creating an important program that endures today. "One of the things I'm most satisfied with is the institution of the small group program," he says. "I was associate dean, and Marty [Martin Friedland] was dean, and we put our heads together to make this happen."

However, his biggest accomplishments, he says, have been in the classroom. "It's hard work, there's a lot of preparation, but when I'm in the classroom, that's not work, it's joy. I get a great kick out of my students–they are such clever, witty people."

Asked what has made him such a stellar teacher, he returns to the idea that his work is like acting. "My most valuable attribute as a teacher is that I'm a ham. I am a ham who loves what he is hamming about. I love being enthusiastic, love to feel the audience, and to help them not just to understand, but to like the subject."

Then he gives a hearty laugh, and adds, "Well, tolerate it at least! I don't flatter myself that they'll remember the details I taught them, but it contributes to honing their instincts–it's like planting red flags in their mind that spring up, "Hmm, I remember Scane's class in this area, my client is getting onto thin ice here.' If I achieve that, I've done a pretty good job." ■





Departments: News Around the Law School

This Fall has been a busy time for the Faculty, with a special visit from the Honourable Paul Martin, an Orientation week packed with events and distinguished speakers, and a spectacular Grand Moot performance in front of three Justices of the Supreme Court of Canada. Read about these and other recent law school activities in the pages that follow.

2002 Distinguished Alumnus Award Dinner

The Honourable Paul E.P. Martin '64

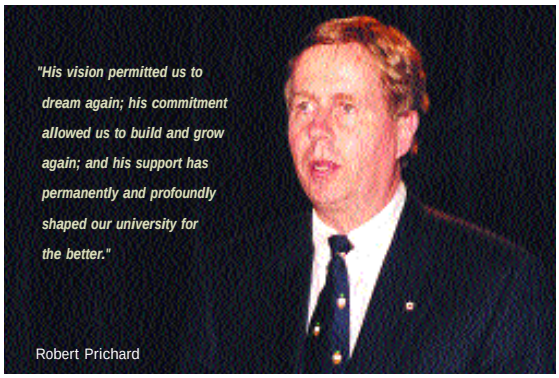
Thursday November 21st would begin like any other day at the Faculty of Law – students lined up at Starbucks in Flavelle House in a last-minute rush to grab a cup of coffee before 9:00 am classes, and the Rowell Room alive with activity. What made this day special, however, was that the law school would have the great honour of playing host to a remarkable alumnus, distinguished public servant, and legendary Canadian – the Honourable Paul Martin.

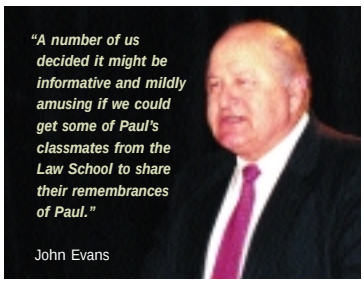
Mr. Martin began his visit to the law school with a visit to an upper year class, *Law Institutions & Development*, taught by Professor Michael Trebilcock and Dean Ron Daniels.

Mr. Martin's stirring remarks focused on the challenges of the developing world, and the role that law and legal institutions could play in fostering economic growth and political liberty. Based on his experience as Finance Minister, and, in particular, his role in responding to various financial crises in Latin America and Asia, Mr. Martin discussed the need to develop international institutions possessing greater transparency and accountability than those existing at present.

In this respect, Mr. Martin argued for Canada's prospective role in leading international efforts designed to create a new institutional architecture that will better respond to the needs and aspirations of the South. Importantly, he challenged the students in attendance to think imaginatively about their own roles in contributing to this monumental enterprise.

According to Mr. Martin, there is a compelling need for lawyers to contribute as energetically and creatively as other professional advisers to the task of reducing disparities between the North and the South. The students in attendance found the class nothing less than inspiring. Said one student "I felt lucky to have had the opportunity to listen and learn from Paul Martin. His comments were visionary and intellectually exhilarating. I left feeling that the world was my oyster".



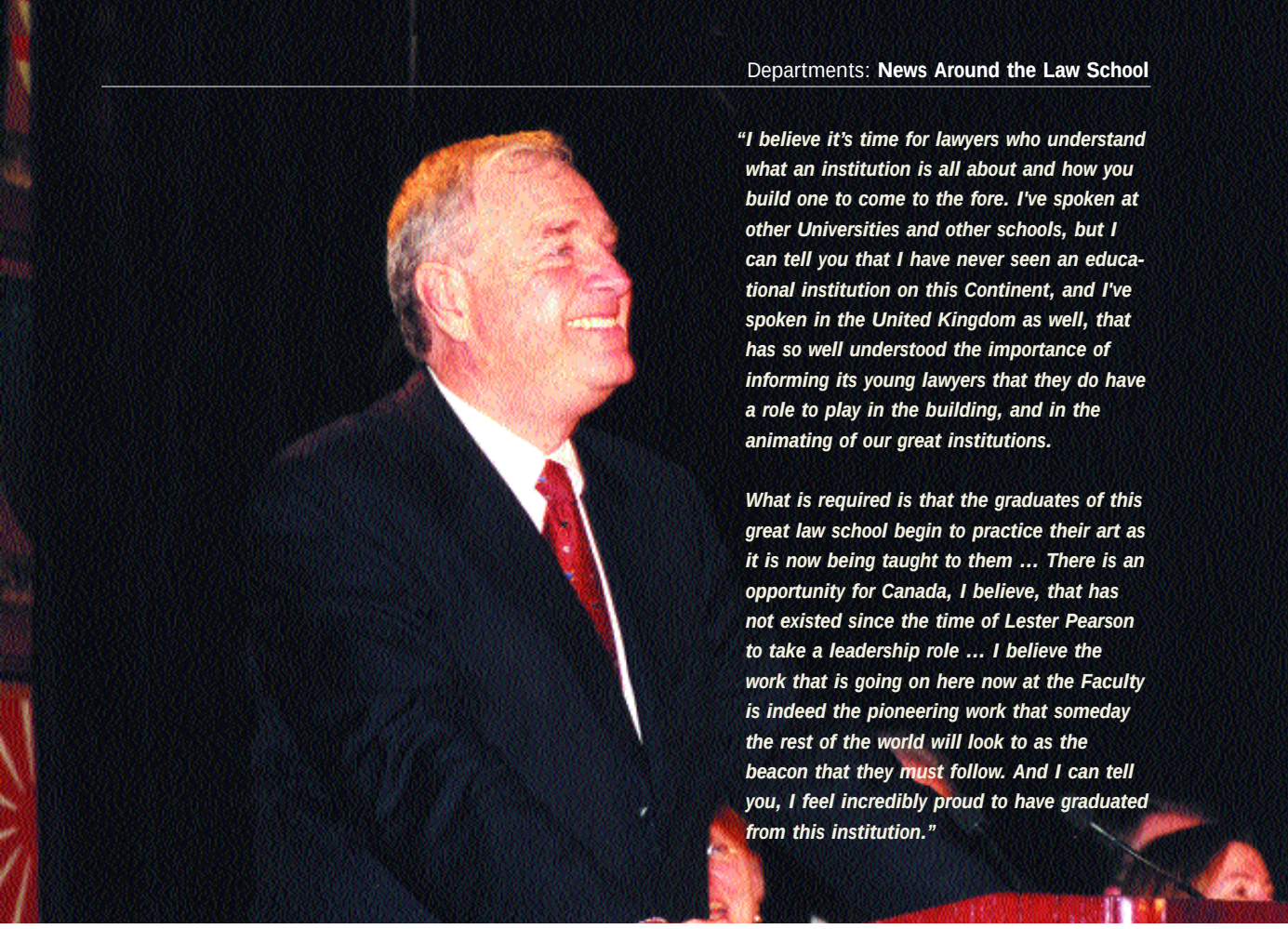


Later on, a small reception was held in the Rowell Room from 5:00 to 6:00 p.m. so members of the LAA Council, faculty and others could speak with the honourable member of Parliament and former Finance Minister in a less formal setting.

The evening continued with a reception and dinner at Hart House for a packed room of more than 350 alumni and special guests of Mr. Martin. Speeches included a warm welcome from the University's Provost, Shirley Neuman; a tribute by former Dean and University President Robert Prichard; and a characteristically witty speech by Justice Rosalie Abella.

Starting the festivities on a light note, John Evans, Mr. Martin's fellow classmate, introduced a video produced specially for the evening. The video – featuring more than 15 of Mr. Martin's classmates and colleagues – offered a slightly irreverent look back at Mr. Martin's days as a law student from 1961 to 1964. Thankfully his sense of humour is as well-developed as his skill as a public servant, and he wore a smile throughout the proceedings.

By far the highlight of the evening was the speech given by Mr. Martin himself. Speaking mostly off the cuff, he began by captivating the crowd with warm enthusiasm for the law school and amusing remarks about the evening.



"I believe it's time for lawyers who understand what an institution is all about and how you build one to come to the fore. I've spoken at other Universities and other schools, but I can tell you that I have never seen an educational institution on this Continent, and I've spoken in the United Kingdom as well, that has so well understood the importance of informing its young lawyers that they do have a role to play in the building, and in the animating of our great institutions.

What is required is that the graduates of this great law school begin to practice their art as it is now being taught to them … There is an opportunity for Canada, I believe, that has not existed since the time of Lester Pearson to take a leadership role … I believe the work that is going on here now at the Faculty is indeed the pioneering work that someday the rest of the world will look to as the beacon that they must follow. And I can tell you, I feel incredibly proud to have graduated from this institution."

Striking a more serious note, Mr. Martin continued by saying that "there could be no greater privilege and there's certainly no more emotionally deep moment for a man or a woman than being honoured by his or her peers. There's no doubt in my mind that I went to the greatest Law School, not only in this country, but on this Continent. I have been very proud all of my life to say that I was a graduate of the University of Toronto Law School. When I think back I remember the phenomenal faculty that we had, the greatest legal minds in this country. When I tell young lawyers the names of the people I was educated by, you can see how much of a privilege they feel that I was given."

(l to r): Justice Rosalie Abella, the Hon. Paul Martin and Dean Ron Daniels

The Honourable Paul Martin receiving the 2002 Distinguished Alumnus Award, presented by Ms. Kirby Chown.

Top (l to r): Students, Hilary Braden, Michael Cohen, Evan Gold, Marisa Wyse and Joanne Golden

Middle (l to r): *(front)* Rachelle Dickinson, Michelle Wood, Caroline Libman, Soma Choudhury, Amber Pashuk *(back)* Josh Paterson and Rex Shoyama

Bottom: Professor Tony Duggan, Associate Dean of the Faculty of Law

Orientation 2002 - Expanding the Law School Community

On Tuesday September 3rd, the Faculty welcomed 180 new first-year students onto its august campus. Orientation 2002, which ran from September 3-6, 2002, was the most ambitious and successful program ever, with a multitude of events during which students had an opportunity to start new friendships, learn about the school, meet their professors and begin thinking about the great profession into which they were entering.

The Orientation program was infused with the notion that the law is more than a profession. It is a calling – to serve the community and future clients with best efforts and utmost professionalism. A luncheon featuring an inspirational keynote address by the Honourable Madam Justice Rosie Abella made this message come alive with warmth and enthusiasm.

A "Meet-Your-First-Year-Professors" luncheon allowed first years to meet and hear from their professors, and an event hosted by Downtown Legal Services focused on ways in which lawyers in the academe, the private bar and the public interest sector transform the ideals of the profession into reality. Guest speaker Chief Roberta Jamieson of the Six Nations of the Grand River, and the first female Aboriginal lawyer in Canada, shared her deep convictions and aspirations both for her nations and the people of Canada and closed the week on a reflective note, challenging students to question and create change while respecting the heritage of our ancient land.

Along with the serious business of getting acquainted with the school and to the law, the Orientation program also included many moments of fun, with events including dinners at various restaurants around the city, the traditional Dean's Barbeque, and a dinner cruise on Lake Ontario.

Many thanks to the following committee members for their dedication, support and enthusiasm: Josh Paterson (orientation chair), Sarah Armstrong, Soma Choudhury, Rachelle Dickinson, Caroline Libman, Cathy Ma, Amber Pashuk, Rex Shoyama, Stephanie Tjon and Michelle Wood. Also special thanks to faculty and staff including Lois Chiang, Judy Finlay, Celia Genua, Bonnie Goldberg, Mayo Moran and Merril Randell.

The Orientation Committee and the Faculty would also like to thank the following keynote speakers, who donated their time and experience: Justice Rosalie Abella, Chief Roberta Jamieson, Michael Code, Amina Sherazee, and Professor Kent Roach. Finally, we owe our gratitude to the following law firms for their generous financial support:

Aird & Berlis
Baker & McKenzie
Blake, Cassels & Graydon
Borden Ladner Gervais
Cassels, Brock & Blackwell
Davis & Company
Fasken Martineau DuMoulin
Fraser Milner Casgrain
Gilbert's
Goodman and Carr
Goodmans
Gowling Lafleur Henderson
McMillan Binch
McCarthy Tétrault
Miller Thomson
Ogilvy Renault
Osler, Hoskin & Harcourt
Shibley Righton
Stikeman Elliott
Torys

Back to School for Justice Sharpe

For this academic year, the Honourable Mr. Justice Robert J. Sharpe, a judge of the Court of Appeal for Ontario, has returned to the Faculty. "It's great to be back at the law school," he says with a smile. "I feel like I've come home - I certainly know what subway stop to get off at."

Justice Sharpe has come here often: not only is he a graduate of the class of 1970, but he joined the faculty in 1976, and served as dean from 1990-1995. He left to become a judge for the Ontario Superior Court of Justice. "It was a transition, but not as big a one as you might think," he says. "Essentially you are solving problems in either job, as dean or judge, and looking for principled, commonsense solutions."

Justice Sharpe, describing himself as "a dedicated Flavellian," will be ensconced in Flavelle House for the duration of his judicial study leave. He plans to finish writing a biography of the Right Honourable Brian Dickson, former Chief Justice of Canada, which he is working on with law professor Kent Roach. Justice Sharpe, who is the author of numerous scholarly articles and several books, worked with former Chief Justice Dickson as executive legal officer of the Supreme Court of Canada from 1988-1990.

The book is a piece of unfinished business dating back to the time of Justice Sharpe's earlier days at the law school. "I'm afraid to say that I've been working on it for so long that I was working on it when I was here as Dean. You don't have to emphasize that," he says with a laugh. "But I hope that being back will inspire me to finish it; the atmosphere is excellent for writing and reflecting on the career of this distinguished judge."

(l to r): The Honorable Justices Major, Iacobucci and Binnie

Grand Moot Welcomes Home Three Justices of Canada's Top Court

For law students, the art of courtroom advocacy and persuasion can be a daunting experience. But the stakes get higher still when they are expected to appear before three all-stars of the Canadian judicial system.

That's what four third-year law students discovered when they participated in the Faculty of Law's annual Grand Moot on Sept. 24, 2002.

Each year, four of the school's top oralists present legal arguments before three members of the Canadian judiciary who volunteer their time to sit as judges for the event. This year three of the nation's top justices from the Supreme Court of Canada participated in the event. The presence of Justices John Major ('57), Ian Binnie ('65), and Frank Iacobucci (LL.D. 1989) – law school dean from 1979 to 1983 – had a profound effect on student mooters.

"It was quite a thrill in a lot of ways," said David Patacairk, a third-year student and Grand Moot appellant. "In the normal course of our careers, most of us will be lucky if we ever stand before the judges of the Supreme Court, and those of us who do likely won't be doing so for a decade or two."

The collegiality and good natured humour of the esteemed judges marked this special occasion. Praising the students for their handling of the overzealous questioning from the bench, Justice Iacobucci read the final verdict to the mooters: "You are a credit to yourselves, a credit to the law school, and a credit to your fellow law students. Congratulations to all of you."

For the full story please see the Faculty of Law web site at www.law.utoronto.ca .

(l to r): Dena Varah, Louise James, Dean Ronald J. Daniels, Justice Frank Iacobucci (LL.D. '89), Reena Goyal, Justice John Major ('57), Justice Ian Binnie ('65), Dave Patacairk, Jana Stettner

Trudeau Remembered by Faculty of Law

Left: (l to r): Hon. Barnett J. Danson, Alexandre (Sacha) Trudeau, Dean Ronald J. Daniels, and Dr. Jon S. Dellandrea
Right: Alexandre Trudeau

On May 22, 2002, the Faculty of Law hosted a luncheon to celebrate the memory of the Right Honourable Pierre Elliott Trudeau, and to thank his many generous friends and colleagues who donated the Trudeau portrait that hangs in the Bora Laskin Law Library.

"Mr. Trudeau's tenure indelibly marked this country, its policies, and its social fabric," said Dean Ronald J. Daniels in his address. "Many of the distinguished members of his cabinet are with us this afternoon and we applaud the legacy that they worked so hard to create in Canada."

The portrait, painted by the late Duncan MacPherson, is fittingly hung in the Laskin Library. Trudeau nominated Justice Laskin to the Supreme Court of Canada in 1970 and appointed him Chief Justice in 1973. Prime Minister Trudeau was also present at the dedication of the Bora Laskin Law Library in 1991.

Pierre Trudeau's son, Alexandre (Sacha) Trudeau, spoke to the group about his appreciation of the portrait's whimsical nature, which so clearly captured the spirit of his father.

The donation of the portrait to the Faculty of Law was championed by the Honourable Barnett Danson, who was also present at the celebration, and who served in the Trudeau government as parliamentary secretary, Minister of State for Urban Affairs, and Minister of National Defence.

Danson had originally seen the portrait at an exhibit of MacPherson's work in 1999 and felt that it should find a public home rather than go into a private collection. He invited a number of his colleagues to join him in presenting this portrait to the Faculty of Law at the University of Toronto.

Following the formal remarks, the donors and guests joined Dean Daniels for a luncheon that included vivid reminiscences of Pierre Trudeau, the government he led, and his commitment to his family.

The Faculty of Law is grateful for the generous contributions of so many of Pierre Elliott Trudeau's friends who ensured that this splendid portrait will reside at the Law School.

Greenspan receives 2002 Laidlaw Medal

Brian Greenspan

Toronto lawyer Brian Greenspan was awarded the 2002 Douglas K. Laidlaw Medal in recognition of his excellence in oral advocacy. The award, given annually to a distinguished Canadian barrister, is among the most prestigious honours that can be bestowed upon a member of the legal profession.

Greenspan, celebrated in a Feb. 26, 2002 ceremony held in the Moot Court Room at Flavelle House, is a partner in the Toronto law firm Greenspan, Humphrey, Lavine. He received his B.A. from the University of Toronto ('68), LL.B. from Osgoode Hall ('71) and LL.M. from the London School of Management ('72). A past Laidlaw Foundation Fellow, he is a respected lawyer and teacher, and has served on numerous legal organizations, including as president of the Criminal Lawyers' Association, founding chair of the Canadian Council of Criminal Defence Lawyers, and vice-chair of the Criminal Justice Section for the Canadian Bar Association.

Also honoured at the event were 2001-2002 recipients of the Douglas K. Laidlaw Scholarships, awarded to first- and second-year students at the University of Toronto's Faculty of Law on the basis of academic excellence, financial need and a demonstrated interest and proficiency in advocacy. The winners were Allyssa Case, Jason J. Kee, Colby Linthwaite, Lucie Molinaro and Ria Mykoo.

The Laidlaw medal and scholarships are made possible in perpetuity by the Douglas K. Laidlaw Fund, which aims to further legal education and the ideals of the profession. The fund was established in 1997 by friends and colleagues of the late Douglas K. Laidlaw Q.C., a renowned trial lawyer and long-time supporter of the University of Toronto law school's trial advocacy program.

Prof. David Duff Dissects Important Legal Tax Issues

Prof. David Duff has recently authored two significant pieces on contemporary tax law issues.

At the request of the Federal Department of Justice, Prof. Duff completed a major study entitled "The Federal Income Tax Act and Private Law in Canada: Complementarity, Dissociation, and Canadian Bijuralism."

The study, which Duff also presented at the annual Canadian Tax Foundation conference in September 2002, examines the relationship between the federal Income Tax Act and provincial private law, with special attention given to differences between Quebec's civil law system and the common law systems in other provinces.

Prof. Duff also recently completed a comment entitled "Recognizing or Disregarding Close Personal Relationships Among Adults? The Report of the Law Commission of Canada and the Federal Income Tax."

The comment, published in the Canadian Tax Journal, takes a close look at various tax recommendations contained in the Law Commission of Canada's report, "Beyond Conjugality," which deals with legal rules relating to close personal relationships among adults.

For full details about the government-commissioned report or commentary, see the publications section on Prof. Duff's Faculty Web page: http://www.law.utoronto.ca/faculty/duff/

Professors Ziegel and Duggan Critique new Consumer Protection Act in Bill 180

On November 25, 2002, Professors Ziegel and Duggan joined forces with Professor Vaughan Black at the Osgoode Hall Law School and Professor Tom Telfer at UWO to file a 41 page Submission on Bill 180 with the Finance and Economic Affairs Committee of the Ontario legislature. Bill 180 is a 190 page revision of the Ontario Consumer Protection Act and Business Practices Act and licensing legislation involving motor vehicle dealers, real estate agents and brokers, and travel agents and brokers.

The lengthy submission provides a detailed critique of what the authors have identified as deficiencies in the new Consumer Protection Act (as part of Bill 180) including weak enforcement mechanisms and inadequate resources earmarked by the Ontario government. "It is easy to adopt bountiful legislation; the acid test lies in an administration's willingness to put its money where its mouth is" say the submission's four authors. Ziegel, Duggan, Black and Telfer also note that in the fiscal year 2001-2002 the Ministry budgeted just $9 million for its monitoring and consumer enforcement activities, less than one dollar for each of Ontario's 11 million people.

The full text of the law professors' submission is available on the Faculty's website at www.law.utoronto.ca .

Esteemed Guests Entertain and Advise During JD/MBA Speakers Series

Clockwise from Top Left: Gerry Schwartz, Ken Cancellara, Rob Prichard and Anne Fawcett

The JD/MBA Student Association continued its speaker series in 2002 with four very distinguished guests: Gerry Schwartz, Chairman, President and CEO of Onex Corp.; Ken Cancellara ('72), Senior Vice President and General Counsel for Biovail Corp.; Anne Fawcett, Managing Partner of The Caldwell Partners; and Rob Prichard ('75), President and CEO of Torstar Corp.

Before establishing Onex in 1983, Schwartz earned success in the competitive field of mergers and acquisitions and cofounded CanWest Capital (now CanWest Global Communications). He regaled students with colourful anecdotes and challenged them to think creatively and pursue their dreams with passion and vigour.

Ken Cancellara impressed his audience with stories of entrepreneurial daring and success. From his start as a litigator, Cancellara became managing partner and Chairman of the Executive Committee with the law firm of Cassels, Brock and Blackwell. In 1996, he began his rise to his current position with one of Canada's fastest growing and dynamic organizations.

Anne Fawcett offered a candid and entertaining chronology of her professional ascent, providing tips on networking and invaluable advice on how students could assess their skills and interests. Rob Prichard, Dean of the Faculty of Law from 1984 to 1990 and U of T President from 1990-2000 ended the year on a high note, encouraging students to pursue excellence, confident in the knowledge that personal and professional success will follow.

Convocation 2002: Reflections on Past Accomplishments and Future Goals

Dean's Key Recipients; Patricia McMahon (left) and Catherine Sykes (right) pose with Dean Ronald Daniels

Harry Arthurs, president emeritus of York University and a U of T law school alumnus, congratulated the graduating class of 2002 in a convocation address on June 12. "Convocation tells a moving story: of the achievements of graduates, often against long odds; of the historic significance of this day for their families and communities; of the vicarious pleasure shared with their friends; and of the faculty's symbolic renewal of its commitment to teaching and learning," said Arthurs, who graduated from the law school in 1958.

Another prominent law school alumnus, Rob Prichard ('75), former dean of the law school (1984-1990) and U of T president (1990-2000), kicked off the Spring series of convocation ceremonies two days earlier. Both Prichard and Arthurs were among 19 recipients of honorary degrees who addressed graduating students at various convocation ceremonies held at U of T from June 10-25.

Prichard, who graduated from the Faculty of Law in 1975, described how he had felt at his own convocation 27 years ago. "It was a wonderful day," he recalled. "Relief that we were done; liberation from the imperatives of exams, essay deadlines and grades; and excitement about all that lay ahead." Prichard is currently president and CEO of publishing company Torstar Corp.

The law school's Class of 2002, after being congratulated by Prof. Arthurs and receiving their degrees under the grand dome of Convocation Hall, returned to the Faculty to celebrate with family, friends and faculty members. At the reception, student awards were presented to recognize outstanding achievements. Top honours went to Catherine Sykes, who won three awards, including the Angus MacMurchy Gold Medal for the highest cumulative average while at law school.

The following students were recognized by the Faculty in 2002:

Angus MacMurchy Gold Medal
Highest cumulative average
Catherine Sykes

W.P.M. Kennedy Silver Medal
Second highest cumulative average
S. Sophia Reibetanz

James B. Milner Bronze Medal
Third highest cumulative average
Matthew J. Cumming

Gerald W. Schwartz Gold Medal
Highest cumulative average in the J.D./M.B.A. program
L. Leanne Ingledew

Michael J. Moldaver Prize and Carswell Prize
First in third year
Emily Morton

Class of 1967 Prize
second in third year
Catherine Sykes
third in third year
Benjamin R.D. Alarie

John Willis Award
Recognizing students who best embody the spirit of leadership at the law school
Stephen Parks
Karen Park

Gordon Cressy Student Leadership Award
Recognizing students who have made a substantial volunteer contribution to the Faculty of Law or to the University of Toronto
Sarah Armstrong, Salim Hirji-Lalani, Anna Marrison, Mindy Noble, Karen Park, Pauline A. Rosenbaum, Karyn Sullivan

Dean's Key
Recognizing students who during J.D. studies exhibit the greatest interest in extracurricular work of an academic nature
Patricia McMahon
Catherine Sykes

Our apologies: In the spring 2002 issue of Nexus we omitted the name of one of the two winners of the Dean's Key Award for 2001. They were Lisa Dufraimont and Andrew Gray. Also, the 2001 winner of the WPM Kennedy Silver Medal, the Carswell Prize and the Justice Michael Moldaver Prize was Georgia (Gena) Argitis, whose name we recorded incorrectly.

Dean's Leadership Luncheon Series Focuses on the Careers of Entertainment Lawyer and Corporate Counsel

Graham Henderson ('85)

Jill Schatz ('83)

In 2002, the Dean's Leadership Luncheon series welcomed two accomplished alumni – Graham Henderson ('85) and Jill Schatz ('83). The casual sessions are meant to be informative and enlightening, as students benefit from the advice and experiences of graduates of the law school.

Henderson ('85), Senior Vice President of Business Affairs and e-Commerce for Universal Music Canada, has remained in close contact with the Faculty as an instructor for the past several years, teaching both an Entertainment Law course and co-teaching the Art of the Deal workshop with Paul Halpern of the Rotman School of Business.

Henderson's discussion touched upon the music industry's reaction to the threat posed by new technologies, and included recollections about the development of his entertainment law practice.

Schatz ('83) shared her diverse work experiences as corporate counsel and President of the Canadian Corporate Counsel Association. Covering a lot of ground, Jill discussed the cost-effectiveness of in-house counsel, the significance of an MBA to a lawyer in a business environment, and the extent of regulatory work within an in-house counsel practice.

She challenged students to face obstacles head on, and to continue the U of T tradition of practising law in innovative ways.

Another Strong Showing for Student Mooters

Student oralists in the Faculty's mooting program had another strong showing this past academic year, bringing home the winners' trophy in three competitive moots and performing admirably in other oral advocacy contests.

Among the winners was a law school contingent that traveled south of the border to Pittsburgh, Pa. to bring home top honours at the Niagara Moot competition. The law school also won the Arnup Cup, defeating all other participating Ontario law schools in the process. And for the second time in 20 years, the Faculty won the Gale Cup, beating out 13 other law schools.

Faculty teams competing in the Securities Moot, the Fasken Public International Law Moot, and the Wilson Moot all earned second-place finishes, while law school teams in the bilingual Laskin Moot, the Jessup International Law Moot and the Goodman and Carr LLP Cup all gave strong performances.

Niagara Moot
Kevin Doyle
Jenn Matthews
Rikin Morzaria (Fourth place oralist)
Chris Veeman
Coaches: Alix Dostal, Julie MacLean

Arnup Cup
Anna Marrison
Adriana Ametrano

Gale Cup
Stephanie Wakefield
Noah Klar
Dena Varah
Karen Park (Dickson medalist as a top oralist)
Coaches: Salim Hirji-Lalani, Katie Sykes

Securities Moot
Ariane Farrell
Marcia Jones
Jaan Lilles
Jana Stettner (top oralist)
Coach: Mike Hollinger

Fasken Public International Law Moot
Daniel Anthony
Keith Burkhardt
Simren Desai
Alex Dosman
Michael Fishbein
Trevor Ogle
Sean Seaton
Alex van Kralingen
Coaches: Reena Goyal, David Patacairk

Wilson Moot
Sarah Corman
Tim Dickson (top oralist)
Colin Grey
Leigh Salsberg
Coaches: Estee Garfin, Rebecca Jones

Laskin Moot
Ian Campbell
Brenda Didyk
Claire Hunter
Josh Hunter
Coaches: Adrian di Giovanni

Goodman and Carr LLP Cup
Sana Halwani and Mike Dunn (first place)
Sean Keating and David Kolinsky (second place)
Shaun Laubman
Stephanie Tjon
David Gourlay
David Klacko
Dan Bornstein
Alysia Davies
Jennifer Wilson
Sean Horan
James Rempel
Michael Lee
Cathy Clark
Eli Pullan
Karl Ang
Brock Jones
Darius Jannat
Roy Lee
Coaches: Ian Campbell, Karen Park, Dena Varah, Stephanie Wakefield

Health Care in Ontario

THE HONOURABLE TONY CLEMENT '86

Minister of Health and Long Term Care for Ontario and Member of Provincial Parliament for Brampton West – Mississauga. In an interview with Minister Tony Clement, he comments on the value of his law degree, the future of health care in Canada, and the role of the Faculty's health law scholars in the formulation of public policy.

How has your law degree helped to prepare you for your current role as Ontario's Minister of Health and Long-Term Care?

In politics and law, you have to be quick on your feet, able to analyze situations, and able to crystallize bits of often-contradictory information quickly. I learned important skills in these areas that help me in my current role. You never lose out by getting a U of T law degree; you can always utilize it. Whatever passion you have in your life, a law degree will help. That's certainly been true in my life.

I didn't have a specific plan to become a politician, but I did have a passion for politics and a passion for some of the public policy debates we got into. I knew that at one point in my life I was going to give it a try. When opportunity and desire coalesced, I ran in 1995.

What influence do you think the Faculty of Law's scholars, in particular the Health Law and Policy scholars, have on public policy and the future of health care in Canada?

I think that they are an extremely valuable resource. One of the things that this country has to continue to nurture, and indeed, do better at maintaining, is a pool of well-reasoned, experienced, knowledgeable people in various spheres of public policy. If you want to have a reasoned, continuous dialogue on complex public policy issues, and health care is certainly in that category, then you need people who devote their academic and intellectual life more broadly to the discourse. The U of T Health Law and Policy Group is definitely a part of that dialogue, and they contributed to consideration of the issues by the Romanow Commission.

What do you see as the major challenges facing Canada's and Ontario's health care system?

In a nutshell, sustainability and accessibility are the key issues. We have a growing population in Ontario; we have an aging population where the number of people aged 65 and over is going to double in the next 15 years; and we have wonderful health-care innovations such as new medical technologies that are more costly. All of those things put pressure on the system, and as the Romanow report said, if we do nothing, that will not lead to quality health care in the future.

What is your response to recommendations made in the Romanow report?

To the extent that the report encourages innovation, greater federal financial participation in the sustainability of our Canadian medicare system, and greater accountability, we are in favour of that. Now that the report is out, it is up to the elected representatives – the health ministers, finance ministers and premiers – to set out a course of action to ensure that all this good intellectual debate and discussion doesn't just gather dust.

What do you think about Romanow's recommendations for national standards for prescription drugs and home care?

I am confident that Ontario can meet or exceed any national standards that are put in place, and I'm sure we'll be learning further details about this in the near future.

What about restrictions on the expansion of the private sector in health care?

The Ontario government agrees with universality, and with public funding, and that's pretty well as far as the report went. Romanow kept it open regarding delivery – I noticed in the report to the Romanow Commission by the law school's Professors Colleen Flood and Sujit Choudhry that they talked about the need for the Canada Health Act to be reformed to actively encourage innovation and evidence-based reform in the delivery of care. I think that was very prescient: we don't want to shut off innovation, and we want to encourage some evidence-based experimentation. We will continue to have a judicious mix of public and private delivery of health care in this province, and we are going to continue to look at innovations because the needs are too great to just maintain the status quo.

How can Canada's future generation of lawyers – students at U of T – contribute to the system and future public policy?

I think it's critically important to remain engaged in public policy, in politics. We have a desperate need for informed debate and discussion about the future of our country and our province, there are so many issues – international terrorism, or the future of health care or our economic competitiveness – pick an issue and get passionate about it. I got passionate about politics in law school, and here I am implementing it and being part of the political discourse in our country. I would encourage anyone who is reading this article to be passionate about our country, and about our future, and to participate.

Upcoming Events at the Faculty of Law

WINTER 2003

Wednesday, January 8, 2003 12:10-2:00pm	**Professor Dean Lueck,** Montana State University Law and Economics Seminar
Friday, January 10, 2003 1:15-2:45pm	**Professor Trevor Allen** Constitutional Roundtable
Thursday, January 16, 2003 12:10-2:00pm	**Professor Elaine Gibson,** Faculty of Law, Dalhousie University Health Law and Policy Seminar Topic: ***Privacy and Confidentiality Issues Regarding Electronic Health Information***
Thursday, January 23, 2003 12:10-2:00pm	**Professor Julia Abelson,** Centre for Health Economics and Policy Analysis, McMaster University Health Law and Policy Seminar Topic: ***Obtaining Public Input for Health Care Decision-Making***
Thursday, January 30, 2003 12:10-2:00pm	**Professor Patricia Peppin,** Faculty of Law, Queen's University Health Law and Policy Seminar Topic: ***Manufacturing Uncertainty: Adverse Effects of Drug Development and Advertising***
Thursday, February 13, 2003 12:10-2:00pm	**Professor Adalsteinn D. Brown,** Dept. of Health Policy, Management and Evaluation, University of Toronto Health Law and Policy Seminar Topic: ***An Evaluation of Upcoding and Fraud Detection Systems in the US***
Thursday, February 27, 2003 12:10-2:00pm	**Professor William M. Sage,** Columbia Law School Health Law and Policy Seminar Topic: ***Medical Liability and Health System Change***
Friday, March 7, 2003 All Day	**Public Interest Day** Co-sponsored with Osgoode Hall MacDonald Block, 900 Bay St
Wednesday, March 12, 2003 12:10-2:00pm	**Professor Jeffrey Gordon,** Columbia University Law and Economics Seminar
Thursday, March 13, 2003 12:10-2:00pm	**Professor David Cutler,** Dept. of Economics, Harvard University Health Law and Policy Seminar Topic: ***Is Technological Change in Medicine Worth It?***
Wednesday, March 26, 2003 12:10-2:00pm	**Professor Amanda Perry,** University of London Law and Economics Seminar
Thursday, March 27, 2003 12:10-2:00pm	**Professor Bartha Knoppers,** Faculte de droit, Université de Montréal Health Law and Policy Seminar Topic: ***Genomic Databases: Socio-Ethical and Legal Issues***
Thursday, April 10, 2003 12:10-2:00pm	**Professor Janice Stein,** Director, Munk Centre for International Studies, University of Toronto Health Law and Policy Seminar Topic: ***The Cult of Efficiency***
Thursday, April 24, 2003 12:10-2:00pm	**Professor Joan Gilmour,** Osgoode Hall Law School, York University Health Law and Policy Seminar Topic: ***Free-Standing Health Care Facilities: Regulatory Regimes and Policy Choices***

For complete details of these and other Faculty of Law events, please log onto the Faculty's web site at www.law.utoronto.ca

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