

# nexus

SPRING/SUMMER 2008

THE UNIVERSITY OF TORONTO FACULTY OF LAW ALUMNI MAGAZINE

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## nexus

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# MESSAGE FROM THE DEAN

**I**t's hard to believe that it has been more than two years since I was appointed Dean of this great law school. I thought it would be an opportune moment to share with you some of the highlights of the past couple of years, including some important changes and exciting new initiatives that are taking place here at 78 Queen's Park.

One of my greatest pleasures has been connecting with as many alumni as possible, listening to your views and talking about the issues that matter most to you. I have made it a top priority to get out of my office and onto the road to meet with alumni across the country, and in some cases around the world, in every imaginable legal career – from large downtown law firms to small town Ontario, across Canada to Saskatchewan, Vancouver, Ottawa, Montreal, and Halifax, to government offices, clinics, public interest organizations and the judiciary, and to far off locales including London, Hong Kong, New York and Paris. It has been incredibly gratifying to talk directly with so many of you, and hear firsthand why the law school continues to matter in your professional lives. Despite your incredibly diverse career paths and widespread locations, what has struck me most over the course of my meetings is our shared commitment to the academic mission of our law school, and to continuing to produce the best and brightest legal minds for our country.

As members of this vitally important public institution we are in many respects the gatekeepers of the rule of law and social justice. With that privilege comes an enormous responsibility to our country and to the world, one that requires us to serve the public interest in our daily lives no matter where we work and what we do, each of us in our own unique but equally important way. Perhaps there is no better example of our shared commitment to the public good than in the work that many of our faculty and alumni are doing on public inquiries that are struck to deal with often tragic and controversial social problems. This issue of *Nexus* highlights the role that members of our legal community play in advising, researching, testifying at, and directing these important mechanisms for social justice. It has put our faculty and alumni at the forefront of addressing many of the most serious and complex problems confronting our country today. This in turn has helped to shape how, as a society, we resolve key issues such as health care, terrorism, law reform, securities regulation, and Aboriginal land claims, to name just a few.

I am very proud of the incredible passion, commitment and focus that have defined our collective contribution. Our role as a legal institution in helping to shape the public agenda for our country will become increasingly important as we expand our reach to the international arena. We now live in a global world largely without political and economic borders. If we are to remain Canada's pre-eminent law school and one of the top law schools in the world, we must continually strive to examine the way in which we deliver legal education in the 21st century and embrace the challenges of internationalization and diversity. That is one of the reasons I have commissioned the faculty's first ever comprehensive curricular review, with a three-year plan to examine and report on the entire first-year program and make recommendations for improvement and change. I have also spent a great deal of time building connections with some of the world's leading law schools and legal scholars in Asia, Europe, and North America, and finding meaningful opportunities for our faculty and students to learn from, and share ideas with our international peers. These conversations have been the impetus for the creation of two exciting initiatives that will launch in 2008/09. First, we are founding partners of the Transnational Centre for Legal Studies, a new centre for legal education in London England formed in conjunction with Georgetown Law School, the University of Melbourne, Hebrew University, and the National University of Singapore. We are also piloting the "Thematic Term Away", a new exchange program for students in Singapore and London. Both initiatives are described in these pages of *Nexus*.

I am also very pleased to report on the outstanding new faculty who have joined us over the past two years to enhance and diversify our course offerings, including: Professors Michael Code (criminal law), Anita Anand (corporate law), Mariana Mota Prado (law and development), Nehal Bhuta (international human rights), and Simon Stern (law and literature). As well, a number of new scholars will soon be joining us, including: Professors Betty Ho from Tsinghua University in China (banking law), Yasmin Dawood from the University of Chicago and U of T Centre for Ethics (constitutional theory), and Markus

Dubber from SUNY Buffalo Law School (criminal law and philosophy).

Along with pedagogy, another important area that has been at the very top of my agenda is ensuring that the law school stays relevant to practicing lawyers. This past year we held a national day-long summit on diversity in the workplace and work-life balance designed to begin the conversation around issues that are critically important to our alumni and the future of the legal profession. Following the summit, we prepared a report on the ideas generated as well as a comprehensive list of resources to assist legal employers, which is now available on our web site. With the financial support of the Law Foundation of Ontario we are establishing a Centre for Professionalism, Ethics, and Public Service, and we have hired our first Director of Professional Diversity and Legal Opportunities in the Career Services Office with a mandate to advise and help alumni with career advancement, re-entering the workplace, and specific challenges around gender and diversity issues. In partnership with the Rotman School of Management, and with the help of three leading law firms, Blake Cassels & Graydon LLP, McCarthy Tétrault LLP, and Osler Hoskin & Harcourt LLP, we also launched a unique program for women associates to help them develop the leadership skills needed to succeed at law firms today and advance to partnership. Over the next year we will continue to look for ways to offer meaningful and relevant programs for alumni. I look forward to hearing from you on what the key issues are that matter to you professionally.

While our human and intellectual capital have featured prominently on my agenda, much of my focus has been on finding the best solution to our serious space shortage and the ongoing challenge of our aging buildings. I am very pleased to report that a lot has been accomplished towards our goal of a new law school building. I want to thank all of you who took the time to share your vision of what makes a law school great and how to improve and enhance our bricks and mortar to match the reputational excellence of our institution. After more than six months of extensive consultations, and an international search and competition for a winning architectural team, the internationally-renowned Hariri Pontarini Architects was chosen to design the new building. I am indebted to the alumni, faculty, students, and others who spent countless hours advising and working with me on this project, and to Chief Architect, Siamak Hariri, who is committed to continuing to work with us to develop a world class facility that will make our spirits soar. On page 8, Lisa Rochon, acclaimed architecture critic for the *Globe & Mail* describes the Hariri Pontarini conceptual plan and its importance for the law school, the University, and the City of Toronto. I am thrilled to be working with Siamak and indebted to Lisa and others who have helped us to make this terrific choice for the Faculty. Finally, we are all enormously grateful for the visionary leadership of new graduate, David Asper (LLM '07), whose signature gift to establish Canada's first centre and clinic for important constitutional rights issues – *The David Asper Centre for Constitutional Rights* – will firmly position our law school as a leader in advising Canada and countries around the world on key constitutional law issues that matter most to society.

It has been an incredibly busy and exhilarating two years. Yet none of these initiatives could have been accomplished without the support, wisdom and collaboration of all members of our law school community. From our faculty, staff and students, to our alumni, friends, neighbors and partners, the great things we have achieved have required the collective efforts and dedication of a team of supporters. I look forward to working with all of you in the coming years. ■

**MAYO MORAN '99, DEAN**  
U of T Faculty of Law



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## ON THE COVER

Former law school Dean and Supreme Court of Canada Justice, Frank Iacobucci, is heading up the *Iacobucci Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin*. He is pictured here on the cover of *Nexus* along with Prof. Michael Code, who writes in our Focus section about the unique nature of public inquiries and how they are improving the criminal trial process (page 40). Next to Prof. Code is SJD candidate, Kim Stanton, whose thesis takes a critical look at the semantic and political differences between truth commissions throughout the world and public inquires here in Canada (page 68).





# contributors

These U of T Faculty of Law scholars, with a broad range of academic interests and areas of expertise, have each contributed a unique and insightful commentary on the main theme of this Spring 2008 issue of *Nexus* – “Public Inquiries.” Left to right are: Professors Michael Code, Colleen Flood, Martin Friedland, Darlene Johnston, David Duff, Michael Trebilcock, Lorne Sossin, David Dyzenhaus, Anita Anand, and Kent Roach. On pages 38 to 64 read about how our faculty have contributed to some of the most important public inquiries that have been struck in Canada in recent decades, and how their collective expertise has helped to shape the resolution to often tragic and controversial issues.



# LETTERS TO THE EDITOR



**ALAN SCHWARTZ '68** of Fasken Martineau DuMoulin LLP wrote in: "I enjoyed reading the latest edition of *Nexus*. I noted the section on faculty books. What do you think of a section on books published by alumni?"

*Nexus* thought that was a great idea and we have now included on pages 34-35 a list of recently published books by U of T Faculty of Law alumni.

If you are interested in having your recent book noted in the next

issue of *Nexus* please send us an e-mail along with a high resolution image of the book cover. Please write to Laura Rosen Cohen at [laura.rosencohen@utoronto.ca](mailto:laura.rosencohen@utoronto.ca).

**JAMES W. BANNISTER '67** wrote with encouraging words: "The latest *Nexus* looks great! It's hard to believe you're putting out such a high-quality magazine and being environmentally aware at the same time."

Several alumni and friends of the law school wrote to reprimand us for poly-bagging our environmental issue of *Nexus*. **JENNIFER GRIFFITHS '89** and **JOEL KIRSH**, Staff Physician (Cardiology & Critical Care), Hospital for Sick Children, and Associate Professor of Pediatrics, University of Toronto wrote to point out the inconsistency of wrapping our "environmental issue" in plastic, and to request that they receive the magazine electronically instead.

The last word went to **PETER TURK '80** who wrote to say: "*Nexus*, like most publications today, is undoubtedly produced almost entirely electronically. If you were to send it to me in the form of a PDF document by email (like numerous other publications I receive this way) then I would receive it sooner and probably more reliably, the cost of printing would be zero, the impact on forests would be zero, the cost of distribution would be zero, I would have an easily stored document and I could index the document, along with all other issues, thereby being able to rapidly retrieve articles by or about friends and faculty. The environmental mantra reduce-reuse-recycle is prioritized. By focusing on recycling and reusing, you have missed the most important way to help the environment: reduce, in this case to zero, the resources used in distributing *Nexus*."

## RESPONSE FROM THE EDITOR

Thank you to everyone who took the time to write to us about our environmental issue.

As part of our continued efforts to 'green' *Nexus* we searched for suitable alternatives to poly-bagging that would still allow us to take advantage of Canada Post's discount publications rate. In the end we decided to do away with the wrap cover entirely, and trust that Canada Post will take care in delivering the magazines unharmed to your door.

While we are not quite ready to do away with the print version of the magazine entirely, we will continue to include an electronic copy of the magazine on the Faculty's web site and are happy to revise our mailing list for those who would prefer to receive *Nexus* exclusively in electronic format.

We invite you to write to us with comments, suggestions, and news. Please email [j.kidner@utoronto.ca](mailto:j.kidner@utoronto.ca). Visit the Faculty of Law website at [www.law.utoronto.ca](http://www.law.utoronto.ca)

## WATCH FOR AN UPCOMING ISSUE OF *NEXUS*:

### The Changing Face of Legal Education in a Global World



The Faculty of Law is taking a broad look at the impact of globalization on legal education and training. An intensive curriculum review is currently underway, spearheaded by Professor Sujit Choudhry. The faculty is also taking a leadership role on this critical area by organizing a conference (tentatively scheduled for May 2009) on the transnational transformation of the law and its impact on legal education and research. Stay tuned for more details in an upcoming issue of *Nexus*. Articles will include a look at the world's leading global law schools, their role and responsibilities in shaping the direction of legal education, and the impact of globalization in traditional domestic fields such as torts, contract law, corporate and commercial law, criminal law, labour law, and administrative law.



# FROM THE EDITOR

No legal system is perfect.

Though we live in one of the most enviable countries in the world for upholding justice and the rule of law, our adversarial legal system is not without its problems. Professor Michael Trebilcock notes in his article at page 48 that in both the civil and criminal justice systems, formal trials are a “vanishing phenomenon.” Professor Michael Code goes so far as to say in his article at page 40 that we now live in an era where the adversarial trial system has largely become “dysfunctional,” especially where the factual inquiry is lengthy and complex.

Public Inquiries – or Commissions as they are sometimes called – have arisen, in part, in answer to these and other concerns, where serious public policy issues are at stake. They have become a standard feature of our judicial system as a means of examining, addressing and rectifying past injustices, tragedies, and disasters that occur against a person or group of persons. They are also, as Professor Kent Roach notes in his article at page 45, uniquely Canadian. No other country in the world has made use of these independent instruments of fact-finding and fault-finding to the extent that we have in Canada. The wrongful conviction of James Driskell who spent years in jail for a murder he did not commit, the tainted water of small town Walkerton that left many of its residents seriously ill or dead, the shooting of Aboriginal protester Dudley George which shocked the nation, the 1985 terrorist bombing of Air India Flight 182 that tragically left more than 330 men, women and children dead – these are just a few of the tragedies that have been served by a public inquiry system that is now a core feature of the Canadian judicial landscape.

Our law school has been a leader in the effective use and functioning of these unique instruments of public policy. Faculty members and alumni have played key roles in investigating, researching, reporting, testifying and leading inquiries to ensure that justice is ultimately served. In the Focus section of *Nexus* beginning at page 38, faculty articles on a range of issues provide an in-depth examination of the nature of public inquiries, their strengths and weaknesses, their unique inquisitorial powers, their important role in institutional redesign – and as Professor Sossin notes at page 50, the “paradox” that public inquiries can only be called by government, yet are independent of government and indeed capable of bringing down the very government that called them. Our students are exposed to this unique aspect of our judicial system as part of their legal



education. At page 65 we offer highlights of student engagement in the public inquiry process from their first-year bridge program, to extra-curricular involvement beyond the classroom.

Alumni have also been at the very centre of many formal public inquiries constituted under Canadian federal and provincial laws. Indeed, there are so many alumni whose careers have included work on high profile Canadian and international inquiries that it would have been an impossible task to capture their involvement in these pages. I gave up trying. This issue of *Nexus* makes no claim to be an

exhaustive list of alumni who have committed time and expertise to public inquiries. Instead, what we strived to achieve in these pages is an overall sense of the amazing contribution our legal community has made in shaping public policy through their individual and collective involvement in public inquiries. With that in mind, a few distinguished alumni have generously contributed to this issue. John Laskin '76 and John Terry '87 of Torys LLP, who were lead and co-lead counsel of the Iacobucci Internal Inquiry; the Hon. Stephen Goudge '68 of the Court of Appeal for Ontario, who is Commissioner of the Goudge Inquiry; Mark Freiman '83, who was Commission Counsel of the Air India Inquiry; and Katherine Hensel '02 who was Assistant Commission Counsel to the Ipperwash Inquiry, along with Commission Counsel, Derry Millar of WeirFoulds LLP, – each offer a unique and personal perspective on the inquisitorial fact-finding process and their own experience in these complex public inquiries.

We end the issue with a delightful commentary by the Hon. Horace Krever. As all of you will know, Justice Krever led the Krever Commission of Inquiry into the Blood System in Canada (1993 – 1997) in response to the tragedy of HIV-tainted blood that infected more than 1,200 Canadians. His career is a wonderful example of alumni commitment to the public inquiry system in our country.

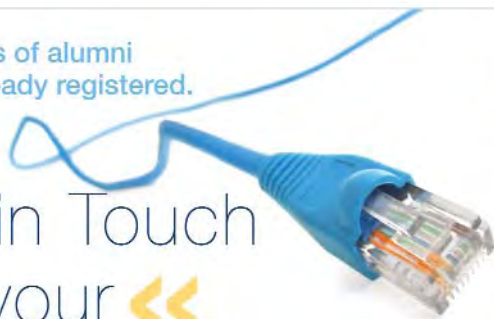
I encourage you to flip through these pages and drop us a line with your thoughts, comments, and opinions on the ideas you come across. I hope you enjoy this issue and have a wonderful summer. ■

## JANE KIDNER ('92)

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Join hundreds of alumni  
who have already registered.

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## ONLINE ALUMNI DIRECTORY

Did you know that the Faculty of Law has an online Alumni Directory that allows alumni to keep in touch with each other via the Faculty of Law web site.

To activate your new account, click on [www.law.utoronto.ca](http://www.law.utoronto.ca) and go to the “Alumni” Portal under “membership registration”. You will be given a password to add information about yourself and view other alumni profiles.

For questions, please contact **Corey Besso** at [corey.besso@utoronto.ca](mailto:corey.besso@utoronto.ca) or call 416-946-8227.



## Architecture Firm Selected for Faculty of Law Expansion

On February 28, 2008, after an international design competition that included more than six months of consultation and outreach to our students, faculty, alumni and broader law school community, the U of T Faculty of Law announced that Hariri Pontarini Architects had been selected to design the new law school building.

The redevelopment of the historic law school precinct has been a priority since 2001 when an independent external review called for significant upgrading of the buildings that house the U of T Faculty of Law. Again in 2006, a second external review confirmed that the law school's growing academic, extra-curricular, and co-curricular programs had created a critical space shortage. An innovative design solution was needed to accommodate the faculty's world class program.

We are excited to be working with Hariri Pontarini on the creation of a new space that will engage and inspire members of our community and augment the stature of this great law school in an inspiring and enduring way.

In the following pages, well-known Architecture Critic for the *Globe & Mail*, Lisa Rochon, comments on the winning conceptual design submitted by Hariri Pontarini.



*The lightness of the new glass addition is played poetically against the heaviness and formality of the Classical Revival Flavelle House with its fantastic Corinthian porticoes.*

BY LISA ROCHON

ARCHITECTURE CRITIC  
THE GLOBE & MAIL

**A**rchitecture has the power to render the highest aspirations of any human being, any institution and any society. Intelligently imagined, it can also reverse doomed exercises in architecture, transforming them into civic acts of generosity and grace. Architecture communicates. This is why there is much that is compelling, inspiring and urgent about the redevelopment of the University of Toronto's Faculty of Law.

Hariri Pontarini Architects, responsible for some of Toronto's most rigorous and elegant contemporary architecture, has been selected for the renovation and expansion plans for the Faculty of Law. This is very good news, not only because their work – McKinsey headquarters on Charles Street, York University's Schulich Business School, Camera Bar, and a highly innovative design for a temple of glass in Santiago, Chile – reaches for beauty, but because their winning scheme lives up to the extraordinary site. To the east, the law property is bounded by Queen's Park, Canada's most formal boulevard, to the south by a spread of mature trees and, to the west the bucolic landscape of the University of Toronto campus. The Faculty of Music and the Royal Ontario Museum spread to the north.

The Hariri Pontarini design might have been stuffy, riddled with historic clichés or given to excessively lording over the site. It might have dared nothing at all, except to mimic the law schools at Yale or Harvard. But, the Hariri design

sidesteps pretension to simply return a sense of civic pride and intelligent urbanism to the Faculty of Law. Two elements on the site critically inform the design: Flavelle House, one of the city's grandest mansions, and Philosopher's Walk. The existing traditional forms and natural lines of the topography are aligned – not subsumed – with the contemporary architecture. In fact, the lightness of the new glass addition is played poetically against the heaviness and formality of the Classical Revival Flavelle House with its fantastic Corinthian porticoes.

Beside Flavelle, a proposed five-storey crescent building sweeps along the curve of Queen's Park Crescent, presenting a regular rhythm of glass wall interrupted by slightly protruding limestone fins measuring some 12 inches deep as well as nickel-silver fins finished to look a muted gold colour. A gentler path meandering up the reclaimed gentle slope to the faculty from Philosopher's Walk has replaced the current heavy handed processional. Imagine the concrete walls of the Bora Laskin library replaced by sculpted edges and a roof that floats above walls of glass. Something quite wonderful happens at the edge of Philosopher's Walk. A reading room has been designed with enlightenment in mind to look directly over the natural setting. Further east, a long walkway leads from Philosopher's Walk into the heart of the new faculty at ground floor.

Architecture was once famously described by the renowned American modernist Mies van der Rohe as the will of an



*The Hariri design sidesteps pretension to simply return a sense of civic pride and intelligent urbanism to the Faculty of Law.*

epoch translated into space. The proposed design favours transparency and clarity, a nod, perhaps, to the progressive role of the Canadian judiciary or, indeed, the society of tolerance emerging in Toronto. With the new design, students and faculty will be able to easily read the plan of the building. Natural light will be privileged within the lecture halls, offices and classrooms. The café and student meeting rooms will spill directly onto the interior atrium or adjoining outdoor plazas. And, the interior riches of Flavelle, including the Georgian-style hall with its delicate windows and an Art Nouveau ceiling painted by Gustav Hahn, will be, at long last, celebrated by the new design.

**CRAFT** and integrity of design is privileged by the Hariri Pontarini scheme. Unlike so many of Toronto's cheaply constructed condominiums responsible for tinting the Toronto skyline an antiseptic green, the proposed design uses a high performance low e glass in a bronze tinted low iron configuration which is layered between sheets of glass.

The atrium has been dubbed the Forum and can be best understood as a promenade that runs between the crescent building and the library pavilion. The atrium will generally rise up at the grand stair – and will climb up the full height so as to give a 'glimpse' of the full scale of the school and to allow faculty and students on five to view down to the main level. This presents an exhilarating potential – consider that the City Room at the Four Seasons Centre for the Performing Arts also rises five storeys – and functions as a meeting hall, conference reception area and, importantly, to help students orient themselves easily within the building.

Hariri Pontarini is a mid-sized firm that emerged from the acclaimed practice of Kuwabara Payne McKenna Blumberg. Over the last several years, the firm has distinguished itself for its rigorous architecture detailed to European levels. The Bahai Temple by Hariri is designed as a monumental volume of lyricism, its nine exterior veils of custom cast glass intended to create exceptional luminosity within Santiago. It has taken three years to develop the scheme using a low iron



Dean Mayo Moran and architect Siamak Hariri in front of displays of the Hariri Pontarini design

recycled glass. City permits for the Bahai temple – the only one in South America – have recently been secured.

**TORONTO'S** understanding of architecture as a critical force within the metropolis has been generally undermined by the construction of banality throughout the downtown core and, beyond, to its suburban edges. Look around and you will see what I mean. Still, there have been glorious exceptions to the rule. The Victorian neighbourhood, densely configured, constructed of local Toronto brick and accommodating with its neat front porches and back yards, is an unsailable triumph. That Toronto continues to grow – indeed, that it has never experienced the kind of urban exodus suffered by the American city – reinforces the fundamental livability of Canada's largest metropolis. There have also been moments of triumph in civic building, notably Toronto's City Hall, an international competition winner designed by the Finnish modernist Viljo Revell to world acclaim. The Commerce Court complex by Chinese-American architect I.M. Pei and the Toronto-Dominion Centre (1971) by Mies van der Rohe represent two outstanding office towers in the city's financial district. There was a boldness to some of the civic visions launched during the 1960s and '70s: the Ontario Science Centre, a vast compound by Moriyama Teshima Architects which hovered over a ravine of mature trees, and Ontario Place, a futuristic vision of lush island landscapes and pavilion pods led by Toronto architect Eberhard Zeidler.

For decades now, monumental architecture has shared the turf, inside and outside the city, along with an interest in creating human-scaled architecture. Consider, for instance, the tremendous monumentality of work by Arthur Erickson, the master of modern architecture in Canada. For Simon Fraser University, Erickson designed an institution which skims horizontally across the top of a mountain in Burnaby, B.C. For Lethbridge University, he drew a massive concrete building housing multiple faculties, staff offices and student residents which runs head long into the undulating landscape of southern Alberta. Rather than allowing his architecture to be

diminished by the land, Erickson designed his buildings to match the force of the landscape.

At the same time, Vancouver architect Ron Thom was recruited by the founders of Trent University to reject the massive scale of new suburban universities, including the massive, anonymous model of architecture being adopted during the 1960s at York University. Together with Tom Symonds, the first president of Trent University, Thom determined to privilege architecture of local materiality and human-scale. Though recent additions to Trent have seriously marred its exquisite sense of place and belonging to the Otonabee River, the poured in place concrete, beautifully formed to delight the eyes, mind and body of its inhabitants, produced one of the great masterpieces of architecture in Canada.

**THE** work of Thom – in particular, Thom’s design of Massey College (1963) in downtown Toronto – has played an important influence over the work of Hariri Pontarini Architects. Attention to brickwork, exterior water features and creating interesting rhythms with a building’s wall proved to be highly instructive to Toronto architects who followed, such as the founding principals of KPMB Architects (Bruce Kuwabara, Tom Payne, Marianne McKenna and Shirley Blumberg). Siamak Hariri and his partner, David Pontarini both worked for several years at KPMB – it was during his time at KPMB that Hariri was appointed project architect for the Woodsworth College, a building indebted not only to the humanized architecture of Thom, but some of the depth and significance given, for instance, to generous wooden windows by the legendary American architect, Louis Kahn.

When he designed McKinsey’s Canadian headquarters, the lessons of Hariri’s mentors resonated strongly. The three-storey building achieves a low but powerful profile with an exterior cladding of Owen Sound Algonquin limestone made to look naturally random; all the joint lines were laid out according to the architect’s specifications. Much of the massing of the building has been reduced by windows cut into the corners, a gesture which effectively breaks down the box. Now, with the Faculty of Law design, the lessons of his mentors have sounded, again, with some key differences. The law building is a more transparent vision. Unlike the current facility, designed in another era, Hariri arranges differing building volumes and heights, delicately touching the contemporary to the historic. The Hariri design has the potential to become one of the great moments in architecture at the University of Toronto.

It would be impossible to conclude that to maintain the law building in its current condition might undermine the intelligent output of its students. My understanding is that the U of T Faculty of Law students are among the most sought after recruits not only because of their education from leading scholars and practitioners but because of a level of maturity and depth of experience. The problem with the current facility is that it rarely celebrates the exhilarating potential of the mind – and that is not only a shame, it is, in this highly competitive global environment, unforgiveable. ■



*Architecture communicates. This is why there is much that is compelling, inspiring and urgent about the redevelopment of the University of Toronto’s Faculty of Law.*

From Bloor Street  
via Philosopher’s Walk



Lisa Rochon is the Architecture Critic for the *Globe & Mail*. She is also the design consultant for the Faculty of Law redevelopment (which means she won’t be writing about the project for the *Globe* for a long while.) She served as professional advisor to Dean Mayo Moran during the 2007 competition process, and was a member of the selection committee that reviewed the schemes of the short-listed firms.

# International Connections: Dean Mayo Moran Reaches Out to World's Top Law Schools

## Legal education is no longer local.

Where law schools once offered students a very “domestic” experience with courses and material focussing primarily on Canadian laws and legal institutions, today’s JD program is deeply informed by international and transnational issues. Canadian constitutional law classes may include an examination of the constitutional order of South Africa, Israel, Australia or England. Environmental law classes require inter-jurisdictional approaches and insights. International commerce and trade, terrorism, and human rights are just a few other examples of how law no longer operates merely in the domestic domain.

“Our students and faculty are very connected to the world at large by their own educational and cultural backgrounds and by their intellectual pursuits,” says Dean Mayo Moran. “In both a real and a philosophical sense, they are citizens of the world. We help to develop and shape their understanding of the world through coursework, research, summer placements, and co-curricular exchange opportunities at other law schools. And we are now beginning to develop new opportunities for meaningful partnerships with international law schools, including a thematic ‘term away’ for students and faculty,” she adds.

Over the past year, Dean Moran has focused her international outreach efforts on leading law schools throughout the world, most recently traveling to Europe and Asia to meet with foreign deans, their leading faculty, and students. These meetings are setting the groundwork for many exciting and academically rigorous student and faculty exchanges and research possibilities.

The following are a few snapshots of some of these international meetings and developments back at home.



**R**ich in history, culture and tradition, Beijing is a fascinating, bustling metropolis. From the Forbidden City to Tiananmen Square, it offers a fantastic starting point for understanding China's incredible near 4,000 years of recorded history, and its place as one of the world's most ancient and simultaneously modern civilizations.

The first academic stop in Beijing was at Peking University (PKU), which was founded in 1898. The campus, known as "Yan Yuan"— translated as the gardens of Yan — is situated in the western suburbs of Beijing near the Yuan Ming Gardens and the Summer Palace. There, Dean Moran met with PKU Vice-Dean Li Ming early in the day to discuss increased student and faculty exchanges.

"I had a really wonderful conversation with Professor Li Ming about the exciting possibilities for future collaboration. It's still early days, but there is a strong mutual interest in pursuing these kinds of unique opportunities for our students," said the Dean.

Other interesting discussions took place with a delegation from the Chinese University of Political Science and Law. CUPSL is one of the most prestigious law research centres in China, and has been at the forefront of many 'firsts' in terms of legal education since its founding in 1952. Vice-President Zhu Yong was Dean Moran's host during her short stay at CUPSL, which included meetings with a number of senior staff and faculty from the International Cooperation and Exchange Center.

Dean Moran also met with Professor Betty Ho ('77), a highly respected professor at Tsingua University and long-time adjunct faculty member of the U of T law school, who provided great assistance in navigating through China.

"Betty was enormously helpful and gracious during our stay," said Dean Moran. "It was also wonderful to meet



## BEIJING CHINA (MAY 2007)

with her and her many talented graduate students, some of whom have plans to spend a portion of their legal studies in North America. Like our own students, these young scholars are eager to see the world and expand their knowledge of law beyond their own borders. It is really exciting to see so many new avenues of scholarly cooperation open up between our two countries."



Dean Moran with Vice Dean Li Ming at Peking University

Professor Ho hosted an alumni dinner in Beijing. Incoming graduate students were also invited to the event which included among the guests, Gui Lin Huang (LLM '03) a lawyer at the local Guo Lian law firm, and Paul McKenzie ('89), a partner at the global law firm Morrison Foerster. McKenzie spoke fondly of his decision to move to China back in the 80s, and of finding his first job at Baker McKenzie at a time when few Canadians worked and lived in mainland China.



Dean Moran sitting with NUS Dean Tan Cheng Han

Dean Moran also spent a day at NUS discussing possible partnerships with faculty members and senior administrators. A U of T-wide alumni reception was also held with Prof. Pekka Sinervo, U of T's Dean of Arts and Science who was in Singapore at the time.

A country chock full of contrasts between east and west, Singapore mixes a rich historical past with a fast-paced future. For students, it offers an ideal opportunity to experience studying abroad in a setting that is uniquely different, but not altogether unfamiliar. "The extraordinary heat notwithstanding, the cultural adjustment to life in Singapore is a smooth one for our students," said Lianne Krakauer, former Assistant Dean, Career Services at the law school, who accompanied Dean Moran on her trip to Asia. "NUS is a highly regarded institution and one we are proud to call a peer. The faculty of NUS were wonderful hosts and very enthusiastic about further possibilities for collaboration," she added.

**S**ingapore is a place where Chinese, Malay and Indian traditions blend with one another in a seamless way. It is home to over four million people, and one of the world's most developed economies. The Faculty of Law has a number of established, successful student exchanges and faculty connections with the National University of Singapore, and Dean Moran was delighted to have had an opportunity to explore additional avenues of cooperation between our two schools.

Dean Tan Cheng Han hosted a dinner for Dean Moran and invited several faculty members, including alumnus Victor Ramraj, Vice-Dean Academic Affairs, who graduated from the law school in 1993 and has been a visiting professor in recent years; Professor Kumar Amirthalingam; and Prof. Stanley Yeo, who has taught an intensive course here at the Faculty.

From Israel to Singapore, this past academic year a number of highly distinguished scholars visited our law school from institutions around the world to teach intensive two-week courses. Along with several U of T professors, these internationally renowned legal scholars bring expertise and insights that immeasurably enrich the academic curriculum.

Prof. Susanne Baer, Humboldt Universität zu Berlin

President Aharon Barak, The Supreme Court of Israel

Prof. John Borrows, University of Victoria Faculty of Law

Prof. Adrienne Davis, Washington University, St. Louis

Prof. Daniel Fitzpatrick, The Australian National University Faculty of Law

Prof. Anne Griffiths, School of Law, Edinburgh University

Dr. Dieter Grimm, Wissenschaftskolleg zu Berlin Institute for Advanced Study

Prof. Ofer Grosskopf, The Buchmann Faculty of Law, Tel-Aviv University

Prof. Timothy Jost, Washington & Lee University

Prof. Mark Rose, UC Santa Barbara

Prof. Arun Thiruvengadam, National University of Singapore

Prof. Adam Tomkins, University of Glasgow

Prof. Neil Walker, Edinburgh University Faculty of Law

Prof. Eric Zolt, University of California



## SINGAPORE (MAY 2007)

**A** huge, “open concept” city on the Yangtze River delta coast known as the “New York” of the Orient, Shanghai is one of the most important economic centres of China. Known for its fantastic architectural mix of buildings both ancient and modern, the vibrant city is home to the historic Yuyuan Gardens and the Bund – as well as Dean Moran’s travel destination – the campus of Fudan University.

“Fudan was founded in 1905, and literally means ‘heavenly light shines day after day’. The university’s name is a tribute to inexhaustible self-reliance and industriousness,” said Dean Nansheng Sun.

Discussions between the two deans focused on areas of shared interests, including comparative constitutional law. “This is an area that our faculty have great expertise and experience internationally advising other countries.

**T**he U of T Faculty of Law has a long history of sending students on exchange to Hong Kong, which has become home to the largest number of U of T alumni and Canadians living and working in Asia. Given Hong Kong’s energy, frenetic pace of life and magnetism, it’s understandable why so many members of the U of T community enjoy studying and doing business there. “Hong Kong is a fast-paced and fascinating city, which bridges east and west in a singular way,” says Dean Moran. “Our students are always eager to spend a semester studying law at HKU, and return with unique perspectives that enrich the learning experience for other students back home,” she adds.

Discussions with Dean Johannes Chan and several of his faculty and staff focused on enhanced opportunities to partner, including faculty exchanges and multi-

I was encouraged to learn that is also a major area of interest for Dean Sun,” said Moran.

Local alumnus Dr. Scott Guan (SJD ‘03), a managing partner at J&F PRC Lawyers, hosted a wonderful dinner for Faculty of Law alumni working in Shanghai. The stories relayed by alumnus, Sam Porteous, a Managing Director with Navigant Consulting, were fascinating and provided a comprehensive overview of practicing law in the rapidly developing Shanghai economy. The dinner also included visiting alumni Richard Wernham (’76) and Joey Tannenbaum (Engineering), who also just happened to be in Shanghai at the time.

“It was wonderful to have Richard and Joey with us to share a very special evening with our alumni in Shanghai” says Dean Moran.

jurisdictional symposia. During her visit, Dean Moran also met with several U of T students who were currently on exchange and heard about their overwhelmingly positive experiences studying and living in one of the most exciting commercial hubs of Asia.

Jeremy Woodall, Associate Director, International Advancement for the University of Toronto in Hong Kong, was another invaluable contact during the visit to Asia. One of the highlights of the Dean’s trip was the well-attended alumni dinner hosted by Mr. Fred Kan (’67), the Founder and Partner of the Fred Kan & Co., a leading commercial law firm. Mr. Kan’s fascinating career path has led him from a successful legal career in Toronto, to running as an MPP candidate in Canada, to currently heading up his own highly successful corporate law firm in Hong Kong.

## SHANGHAI CHINA (MAY 2007)



## HONG KONG (MAY 2007)



(Front Row L-R): Henriikka Hietala, Coline Humbert, Migguan Lim, and Eva Tse (Back Row L-R): Tessa Cerisier, Erika Lofgren, Ranjini Acharya, Susi Phillips, Peter Barnett, Kimberley Moran, Kajsa Wahrenby, Benjaporn Niyom, Kin Wai Thong

## International Exchange Students at U of T Faculty of Law

The Faculty of Law is pleased to have 18 International Exchange students studying at the Faculty of Law this year from the following universities around the globe:

- University of Sydney
- Otago University
- Australian National University
- University of Queensland
- National University of Singapore
- Jean Moulin University (Lyon 3) France
- University of Helsinki
- University Pantheon-Sorbonne (Paris I)
- Uppsala University
- University of Siena
- Jagiellonian University (Poland)
- University of Hong Kong
- Lund University (Sweden)



## PARIS

FRANCE (NOVEMBER 2007)

**A** city that needs no introduction, Paris is an incredible magnet for students from all over the world. It is also a city where the faculty has solid relationships with two leading French law schools, commonly referred to as “Paris I” (Pantheon-Sorbonne), and “Paris II” (Pantheon-Assas). During her trip, Dean Moran had a chance to speak with Professor Francois Ameli and Christiane Prigent, the VP in charge of international relations at Paris I. The President of Paris II, Professor Louis Vogel, Professor Bernard Audit, and Dr. Georgia Schneider, the exchange program administrator, were also delighted to have an opportunity to touch base and candidly share their enthusiasm for U of T students with Dean Moran.



(L-R): Assistant Dean Students Bonnie Goldberg, Prof. Bernard Audit, Dean Mayo Moran, Prof. Louis Vogel, and Dr. Georgia Schneider.

“As it happens, an unusually large number of our French-speaking law students decided to study at our Paris partner schools this year. They made a great impression on the law school administrators, who commended their ability to learn and study law in French,” says Dean Moran. She adds that these students are remarkable ambassadors for the law school – they integrate themselves into the social, academic, and cultural life of a Paris law school and then return to Toronto with a new outlook on their studies and career goals.

## LONDON

ENGLAND (NOVEMBER 2007)

**T**he cradle of the common law tradition and home of the Magna Carta, Britain is an ideal place for young law students to participate in foreign exchange programs. With its rich history, theatres, museums, food, markets and multicultural environment, London is a perennial favourite for exchange students from around the world. Our own students are no exception.

For these reasons and many more, the faculty is delighted to be participating in the new Transnational Centre for Legal Studies (TCLS) in London, England, created in conjunction with Georgetown Law School, the University of Melbourne, Hebrew University, National University of Singapore and a number of other leading law schools. During her stay, Dean Moran visited the location of the new program, which is appropriately located near the Inns of Court.

The Transnational Centre for Legal Studies, is a collaborative project with the world's top law schools. Each school will have the opportunity of sending faculty members to teach their legal specialties to a group of highly motivated law students from all over the world.

“We are delighted that our students will have this unique opportunity to participate in an academically rigorous and intellectually satisfying exchange program in the United Kingdom. This centre will complement our already robust

student exchange programs which normally see 40 students per year studying at leading academic institutions around the world,” adds Moran.

The Transnational Centre for Legal Studies is just one of the ways in which students can study abroad. Another new initiative is the faculty's ‘thematic term away’ or TTA. This fall, students will be going to the TCLS in London for the inaugural TTA. A second TTA is scheduled later this year in Singapore. “The TTA differs from traditional exchange opportunities because it integrates both our faculty and students into the program, and revolves around an area of law with global implications,” says Dean Moran. “Other leading Asian, European, Australian and North American law schools are expected to be available as foreign study options to our students in the near future,” she adds.

“Face to face meetings with international deans and scholars have proven to be by far the best way of evaluating potential avenues of cooperation with peer law schools around the world,” says Dean Moran. “Our faculty members, students and the law school itself are highly respected and recognized throughout the academic world, and it is therefore critical that we continue to explore additional partnership opportunities,” she adds.

The faculty looks forward to continuing to provide both students and faculty with further opportunities to connect and collaborate with other great law schools around the world, and to demonstrating the world-class calibre of our scholarship.

## FACULTY COLLABORATES TO ESTABLISH TRANSNATIONAL LEGAL CENTRE

A major academic initiative involving U of T Faculty of Law and a number of other top flight law schools around the world – the Transnational Centre for Legal Studies – will launch its first teaching year in London, England in October 2008. It will be a global education centre where students and faculty will come together to examine and contribute to an understanding of the development of trans-national legal norms, institutions, and processes. U of T Faculty of Law Professors Kerry Rittich and Stephen Waddams will each spend one semester teaching at the Centre, and ten J.D. students will take their courses there, five per semester. The idea for the Centre was conceived by Georgetown Law Dean, Alex Aleinikoff. The U of T Faculty of Law worked closely with Dean Aleinikoff to establish the Centre with input from other law schools including: Fribourg, Hebrew University, Melbourne, the National University of Singapore, and King's College, London. The U of T Faculty of Law has been involved from the very beginning stages and has played a central role along with other the partner law schools in developing its animating themes and direction and designing the curriculum for the first year. The Centre will encourage a team-based teaching approach between faculty from different schools and legal systems as well as courses and seminars which will bring together faculty and students in a collaborative inquiry. Professor David Dyzenhaus of the U of T Faculty of Law has led our efforts in this innovative initiative, and in October 2008 Dean Mayo Moran and others will travel to London for the official opening ceremonies.

# LORRAINE WEINRIB

BY LAURA ROSEN COHEN

**H**ockey, maple syrup and the Mounties may be the most familiar Canadian products marketed throughout the world. Yet one of Canada's most important and sought-after "exports" internationally needs no trademarked brand.

It's the Canadian Charter of Rights and Freedoms, and Professor Lorraine Weinrib is a first-hand witness to the impact our Charter has had around the globe. In this conversation with *Nexus*, the celebrated constitutional scholar describes her experiences taking the Canadian Charter on the road to judges, legal experts and students in South Africa and Israel.

Sun streaming through her office windows, Weinrib sits comfortably on her full length couch. It's a family heirloom, and the only horizontal space that is bereft of scholarly paraphernalia. Student essays, photocopies of articles, and law journals overflow on bookshelves, and create paper towers covering every inch of her desk, chairs, and floor. Even her doorway cannot escape the eruption of academic ideas and literature, with dozens of books peppered with colour-coded sticky notes threatening to violate all fire safety codes.

The office is a perfect metaphor to its owner – a scholar warmly admired by students and colleagues for her boundless enthusiasm and passion for Canada's constitution.

During our interview, Prof. Weinrib offers a steady flow of commentary on constitutional law, history and theory as well as comparative constitutional insights. The ideas shoot out at a staccato pace. She started to work on the Charter in the late 1970s and 80s as a constitutional expert in the Ministry of the Attorney General of Ontario.

"My involvement in the project dates to the Trudeau era," says Weinrib. She recalls the time period of her life as intensely challenging and requiring enormous creativity for legal scholars, public interest groups and government lawyers involved in formulating the proposed Constitutional amendments that would entrench the Charter.

"It was a huge learning curve for me," recalls Weinrib. "My law school education didn't really go beyond federalism, or include constitutional history or theory. There was also no mention of constitutional principles, conventions or amendments. I hadn't even studied the Canadian Bill of Rights," she adds

Weinrib characterizes the entire process as deeply comparative, and a process that began with an examination of the strengths and weaknesses of the American Bill of Rights. Eventually, she says, the substantive principles and institutional arrangements that captured the spirit of the international post-WWII world and human rights revolution were captured in the Charter.

"The American Bill of Rights is rooted in a particular historical moment. It reflects the particularity of the American national ethos," says Weinrib. "The Canadian Charter, in contrast, incorporates concepts that are both abstract and transformative, including respect for inherent and equal human dignity and the rule of law, and a view of the Constitution as a living instrument," she adds.

According to Weinrib, it is these particular features that make the Charter so appealing to other countries looking to develop their own rights-protecting systems.

"Our Charter has the added legitimacy of a remarkable degree of public engagement in its formulation and in the litigation process. It gives our legislature a distinctive process for overriding particular rights through the 'notwithstanding' clause, so that the judicial role can provide a forum of reason, but not the last word," she explains.

Weinrib's role in the creation of the Charter solidified her as Canada's foremost scholar in the area both in Canada and internationally. Just over a decade ago she was invited to South Africa and Israel, young democracies that were beginning to develop their own rights-protecting systems.

Professor Weinrib's work in Israel has included advising public interest groups, lectures to the senior judiciary and teaching law students at the law schools of Hebrew University and the University of Tel Aviv's Centre for Advanced Legal Studies.

Her visits to South Africa included public lectures, classroom teaching, and seminars for judges and practicing lawyers. "It was a great privilege to witness the transition from apartheid to a liberal, socially-committed democracy, through peaceful means, and through the promise of rights protections that would enfranchise the disenfranchised majority," says Weinrib.

Upon the fall of the apartheid regime, she explains, there was an immediate need to set up new political institutions, as well as a constitutional court to process cases. She had an opportunity to meet with the newly appointed President of the Constitutional Court to advise him on the special procedural and institutional features of litigating constitutional rights.

Both countries looked to Canada as a model for using public power to respect fundamental rights and freedoms. She says that other countries such as Scotland, New Zealand, Australia and Hong Kong continue to look to the Supreme Court of Canada for leadership.

"When I first came to the law school in 1988, I didn't imagine that I would be involved in anything more extensive than teaching Canadian case law. My constitutional travels have given me an opportunity to understand the importance of rights-protection in contexts that are much more troubled than pre-Charter Canada," she says.

Her experiences have motivated her to learn more about constitutional development in other countries and study the history and theory of rights-based democracy in general. Yet she feels there is still much research to be done on the subject, and much knowledge to share with the rest of the world.

"Interestingly, the most startling discovery for me has been that the most difficult constitutional system to understand deeply, remains my own." ■

# The Women's Court of Canada

BY PROF. DENISE RÉAUME

We tend to think of the Supreme Court as having “the last word” when it comes to meting out justice. And yet, Canada has a noble tradition of citizens seeking a review of “final” decisions that were respectfully overturned. The Persons Case, in which the “Famous Five” were forced to appeal to the Privy Council in England in order for Canadian women to be recognized as “persons”, is the most famous example, but there have been others.

This past March 8, 2008, marked the launch of another bold initiative in pursuit of equality rights: the Women's Court of Canada.

**R**ecognizing that any legal judgment is the product of interpretation, and interested in exploring the possible alternatives to six controversial decisions that failed to deliver on the promise of equality our laws are written to protect, a group of lawyers, legal scholars and activists have rewritten the decisions.

Bound by the same rigorous legal constraints within which Supreme Court judges themselves must work, we sought to interpret the laws through a broader, more nuanced lens that considered the different circumstances faced by women and other disenfranchised groups. In the process, we hoped to ensure that the decisions we rendered would more effectively reflect and reinforce the equitable values that Canadians hold dear.

It wasn't easy. In wrestling with the complex legal issues involved, we gained new respect for the task judges face in providing comprehensive reasons and offering an appropriate remedy. And yet the exercise was as invigorating and illuminating as it was daunting. We welcomed the opportunity to explore the potential of section 15, the Charter's equality rights provision that generated such hope when it was introduced two decades ago. Teasing out its intent, identifying precedents, extrapolating consequences and arguing alternative possibilities strengthened our commitment to, and belief in the capacity of our laws to support substantive equality.

### What does that mean, exactly?

“Formal” equality refers to the idea that all persons should be treated equally, and that means applying the same rules to everyone. “Substantive” equality recognizes that women and other marginalized groups are sometimes affected differently than men by policies and laws. This may be for biological reasons, such as the capacity to bear children, or more often because of the accumulated impact of social disadvantage. For equality to be delivered, such differences must be taken into account. A ‘one size fits all’ policy simply reinforces and reproduces past inequalities.

We might be talking about tax policy, the design of pension benefits, access to social assistance, or the range of services provided by schools. It doesn't matter: if the rules are designed with the most advantaged in mind, the needs of disadvantaged groups will not be met. Substantive equality or real equality will be sacrificed to formal equality.

In the cases we reconsidered, members of the Women's Court of Canada found ample justification in law to support an alternative outcome to the original decision. And we respectfully argue that the Supreme Court could have arrived at similar assessments had it applied a more sophisticated analysis of the equity principles at play. In re-writing these judgments, we hope to challenge narrow and formalistic approaches, and encourage interpretations that better address the complex inequalities involved.

We also hope that by establishing the WCC, we will inspire other equality thinkers to engage in similar debates to explore the limits and opportunities of our laws; to seek to show how they can be used to deliver genuine, substantive economic and social equality for all. ■



(L-R): Kate Stephenson (holding her child, Casey),  
Teresa Nahanee, Diana Majury, Mary Eberts, Margot  
Young, Shelagh Day, Gwen Brodsky, Jennifer Koshan,  
Denise Réaume, Sharon McIvor, and Melina Buckley

Denise Réaume is a Professor of Law at the University of Toronto and a founding member of the Women's Court of Canada. The Court celebrated the release of its first six decisions on March 6-7 at the “Rewriting Equality” launch and conference at Osgoode Hall Law School and the Faculty of Law, University of Toronto.

Whether commenting on high profile cases, consulting to governments, advising on public policy or participating in official inquiries, members of the Faculty of Law are always visible in the media. In this section, *Nexus* is pleased to highlight a selection of faculty views and law school initiatives that have been “Making Headlines” in recent months.

## NATIONAL POST

December 14, 2007



**Professor Anver Eamon – an expert in Islamic law – questioned what could possibly bring a father to have allegedly committed murder, for reasons of ‘family honour.’**

**“A malignant vestige of ‘tradition’”, *National Post*, December 14, 2007.**

“this crime is not really about veiling requirements in Islam. Rather, it raises the ugly spectre of “honour killings” – a phenomenon well known and documented in Muslim societies around the world, including Pakistan, Mr. Parvez’s original home. In parts of the world where modern technological advances and Western cultural influences have challenged traditional values, some have responded by confrontationally promoting traditions that are seen as rooting their identity, such as burdening women to be symbols of a family’s honour and virtue.

Should we then be surprised to see women and their bodies bearing the burdens of tradition – literally and figuratively?”

## TORONTO STAR

January 21, 2008



**Judith McCormack, Executive Director of Downtown Legal Services was recently featured along with several students in a feature article about DLS in the *Toronto Star*. The article highlighted our students’ deep commitment to providing legal resources to those facing financial challenges which might impede their access to justice.**

**Law students defend the needy – At the Downtown Legal Services clinic, young legal eagles find a rewarding learning experience that fills an overwhelming need, *Toronto Star*, January 21, 2008**

“one of the chief benefits of the clinic is that it exposes future lawyers like Siew – as well as those who go on to become judges, policy-makers and politicians – to the struggles that the poor and marginalized face in getting representation. “We have kind of a front-row seat in the access-to-justice crisis.”

## TORONTO SUN

January 14, 2008

**The Black Law Students Association at the Faculty of Law has created a grassroots campaign to encourage black youth to attend the University of Toronto as undergrads and to consider U of T’s professional faculties. The new initiative “See Yourself Here”, brought local African Canadian students to the law school in January, 2008 with their families for an open house on careers in law. Reporter Nicholas Davis interviewed 23 year old student Moya Teklu on her experience as the first student of Eritrean background at the law school.**

**“I am making a difference. U of T law faculty invites black youth to have a look”, *Toronto Sun*, January 14, 2008.**

When Teklu’s family came to Canada in 1991 from Eritrea to escape the war in that country, studying law wasn’t in her plans. Teklu had dreams of becoming a journalist. She even did volunteer work at the *Toronto Sun*. But a couple of television shows made Teklu consider law school.

“I never knew any lawyers and had never met one,” said Teklu, whose father is a janitor and mother is a health-care aide. “But I

## THE GLOBE AND MAIL

January 16, 2008



**Professor Trudo Lemmens, an expert on the role of law and regulation in the context of medical research and biotechnological innovation, comments upon a study of the influence pharmaceutical companies may have on clinical judgments of antidepressants.**

**Antidepressants don’t work as well as reported, study says. *New England Journal of Medicine* reports that 88 per cent of clinical trials that showed the drugs didn’t work either weren’t published in medical journals or were presented as positive findings, *Globe and Mail*, January 16, 2008.**

“There has been progress since 2004, but that selective reporting is still a problem. “There is no firm regulatory obligation to report all the results from clinical trials,”

## THE LAWYERS WEEKLY

November 16, 2007



**Professor Ed Morgan, a specialist in international law, discusses what – if anything – is Canada's obligation toward citizens who face the death penalty in foreign countries.**

**Why has Canada changed its tune on citizens facing the death penalty? The Lawyers Weekly, November 16, 2007.**

“The best argument for applying a domestic policy to a foreign state is that the policy reflects international law. Otherwise, we truly impose our ideology on others. Abolition of the death penalty, however, is not obligatory under any of the major multilateral human rights treaties, and although various international bodies have called for abolition, it has not become customary law.”



used to watch Matlock and Law & Order on TV and it made me think about being a lawyer. Then when I was at York doing my undergraduate degree, I took an American history course and learned how the law was used to mistreat people and keep people down. After I graduated, I wanted to head to the States, become a civil rights lawyer and work on amending the constitution.”

Instead of going down south, Teklu went to U of T's law school. After finishing her first year, Teklu said she's now not sure what kind of law she wants to pursue. She's also interested in tax, contract and corporate law. But one thing she is certain about is that she wants to be a role model for black youths who want to attend law school.

## NATIONAL POST

January 26, 2008



**Professor Lorraine Weinrib, a constitutional and Charter expert, recently spoke at the Faculty's commemoration of the 20th Anniversary of the Supreme Court's decision in R. v. Morgentaler. Her focus was on Canada's old abortion laws.**

**“Pro-life v. pro-choice: The debate beats on. Abortion may have few short-term physical complications, and the psychological impact may not be fully known but opinions are firm,” National Post, January 26, 2008.**

## FINANCIAL POST

October 3, 2007



**Professor Jutta Brunnée published the first op-ed in a series for the Legal Section of the Financial Post in advance of the Faculty's November Climate Change conference. She argues that the use of existing global frameworks is the best legal strategy to deal with climate change.**

**“UN best forum for addressing climate change. Existing regimen has guidelines to achieve results,” Legal Post – Financial Post, National Post, October 3, 2007**

“Climate change is a global problem, affecting all countries, whether they are large emitters or not. The main challenge is to engage major emitters in meaningful action. Adopting a long-term global climate change regimen is likely to have greater legitimacy than selective arrangements among coalitions of the willing.”

“Canada's old abortion law, Section 251 of the Criminal Code, banned all forms of abortion until 1969, when then justice minister Pierre Trudeau introduced an amendment to allow it in certain cases, to protect a woman's life or health. This is generally held up in history classes as a great leap forward for women, but it mostly served the interests of doctors, according to Lorraine Weinrib, a University of Toronto law professor. She called it an “incomprehensible monstrosity.”

“What it did was produced the capacity for senior members of the medical profession to open the door and control the traffic, because there were abortions they wanted to do according to their discretion, and they didn't want to go to jail,” she said. The “life and health” standard was further diminished when it became apparent that the strongest predictors of a woman's access to abortion were her doctor's age, sex, whether it was a rural or urban practice, and her own age and marital status, none of which say very much about threats to her “life and health.”

## CONSTITUTIONALIZING ECONOMIC GLOBALIZATION: INVESTMENT RULES AND DEMOCRACY'S PROMISE

Professor David Schneiderman

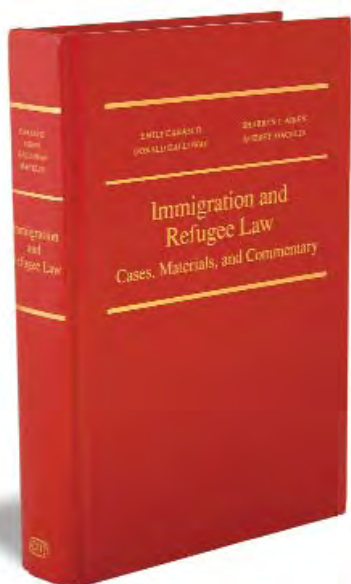
ISBN-13: 9780521692038

Publisher: Cambridge University Press, 2008

Suggested retail price: \$45.00

**FROM THE PUBLISHER:** Are foreign investors the privileged citizens of a new constitutional order that guarantees rates of return on investment interests? This book explores the linkages between a new investment rules regime and state constitutions – between a constitution-like regime for the protection of foreign investment and the constitutional projects of national states. The investment rules regime, as in classical accounts of constitutionalism, considers democratically authorized state action as inherently suspect. Despite the myriad purposes served by constitutionalism, the investment rules regime aims solely to enforce limits,

both inside and outside of national constitutional systems, beyond which citizen-driven politics will be disabled. Drawing on contemporary and historical case studies, the author argues that any transnational regime should encourage innovation, experimentation, and the capacity to imagine alternative futures for managing the relationship between politics and markets. These objectives have been best accomplished via democratic institutions operating at national, sub-national, and local levels.



## IMMIGRATION AND REFUGEE LAW: CASES, MATERIALS AND COMMENTARY

Professors Audrey Macklin, Emily Carasco, Sharryn Aiken and Donald Galloway

ISBN: 978-1-55239-123-5

Publisher: Emond Montgomery, 2007

Suggested retail price: \$100.00

**FROM THE PUBLISHER:** *Immigration and Refugee Law* is the most up-to-date book of its kind. This ambitious text surveys the historical origins of contemporary immigration and refugee law. Using carefully selected excerpts from the writings of leading scholars, and commentary by the learned author team, this casebook provides several theoretical frameworks for normative critique, offering students various perspectives in a cohesive and comprehensible manner. National migration law and policy is examined in a global context, and brings to the surface race, gender, and class dimensions. Current issues of domestic refugee law and pressures on the international refugee regime are explored. The authors also highlight the links between security concerns and immigration post 9/11, and draw connections to broader trends.

## A GLOBALLY INTEGRATED CLIMATE POLICY FOR CANADA

Professors Jutta Brunnee, David G. Duff, Andrew J. Green and Steven Bernstein

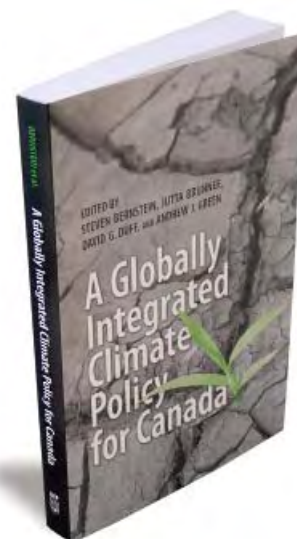
ISBN 978-0-9878-8 (cloth) ISBN 978-0-8020-1 (paper)

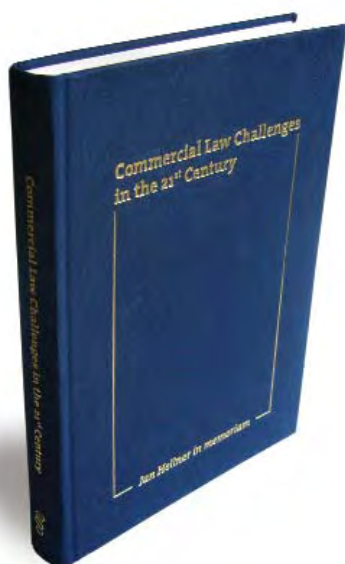
Publisher: University of Toronto Press, 2008

Suggested retail price: \$80.00

**FROM THE PUBLISHER:** Canada has been an engaged participant in global climate change negotiations since the late 1980s. Until recently, Canadian policy seemed to be driven in large part by a desire to join in multilateral efforts to address climate change. By contrast, current policy is seeking a 'made in Canada' approach to the issue. Recent government-sponsored analytic efforts as well as the government's own stated policies have been focused almost entirely on domestic regulation and incentives, domestic opportunities for technological responses, domestic costs, domestic carbon markets, and the setting of a domestic carbon 'price' at a level that sends the appropriate marketplace signal to produce needed reductions.

A Globally Integrated Climate Policy for Canada builds on the premise that Canada is in need of an approach that effectively integrates domestic priorities and global policy imperatives. Leading Canadian and international experts explore policy ideas and options from a range of disciplinary perspectives, including science, law, political science, economics, and sociology. Chapters explore the costs, opportunities, or imperatives to participate in international diplomatic initiatives and regimes, the opportunities and impacts of regional or global carbon markets, the proper mix of domestic policy tools, the parameters of Canadian energy policy, and the dynamics that propel or hinder the Canadian policy process.





## COMMERCIAL LAW CHALLENGES IN THE 21ST CENTURY

*Editors: Professors Jacob Ziegel, Ross Cranston and Jan Ramberg*

ISBN: 978-91-7678-674-1

Publisher: Stockholm Centre for Commercial Law, 2007

Suggested Retail Price: \$129.00

**FROM THE PUBLISHER:** This is a book of essays written by mainly European scholars in honour of Jan Hellner, a distinguished professor of insurance and comparative law at Stockholm University, who passed away several years ago. The three editors were all friends and admirers of Hellner. Editor, Jan Ramberg, is a distinguished Swedish commercial law scholar and holds the chair at Stockholm University previously held by Jan Hellner; Ross Cranston is a judge of the High Court of England and Wales; and Jacob Ziegel is professor emeritus at the U of T Faculty of Law and a former president of the International Academy of Commercial and Consumer Law.

## HEALTH AND HUMAN RIGHTS

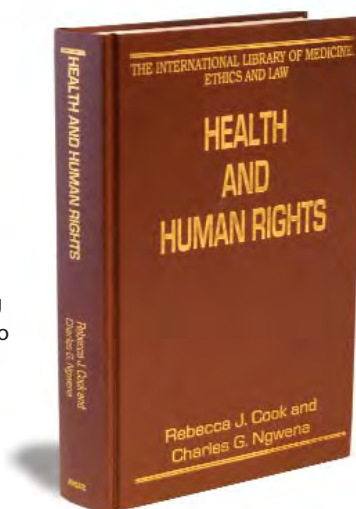
*Professors Rebecca Cook and Charles G. Ngwena*

ISBN: 978-0-7546-2618-3

Publisher: Ashgate Publishing Limited, 2007

Suggested Retail Price: \$275.00

**FROM THE PUBLISHER:** This book addresses challenges of applying human rights to promote health in settings ranging from the local to the global. This work explores determinants of ill-health, including poverty, gender, violence and stigma, examines ways of promoting self-determination in health, and shows how courts have applied rights to improve access to health services.



## CANADIAN BANKRUPTCY & INSOLVENCY LAW: BILL C-55, STATUTE C.47 AND BEYOND

*Professors Anthony Duggan and Stephanie Ben-Ishai (eds)*

ISBN: 978-0-433-45355-0 (Hardcopy)

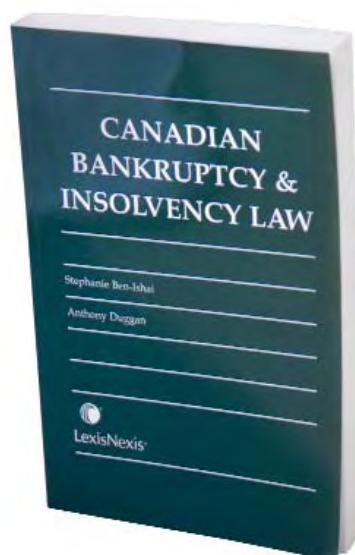
ISBN: 978-0-433-45356 (Paperback)

Publisher: Lexis Nexis, 2007

Suggested retail price: \$125.00 (HC) and \$80.00 (PB)

**FROM THE PUBLISHER:** Canadian bankruptcy law faces a unique situation. Statute c.47 was enacted in late 2005 but has not yet come into force. The "2007 Amending Bill" now calls for substantial amendments to the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, and Statute c.47. What exactly do these proposed reforms mean? What influence can parliamentarians, practitioners, and academics exert during this "window period" to change Canadian bankruptcy and insolvency legislation?

Canadian Bankruptcy and Insolvency Law: Bill C-55, Statute c.47 and Beyond tackles these issues from a wide range of perspectives. Respected Professors Anthony Duggan and Stephanie Ben-Ishai analyze the proposed reforms and related political concerns.



## RECENT BOOKS BY ADJUNCT FACULTY, 2007/08

Stephanie Ben-Ishai (along with Professor Tony Duggan), eds. **Canadian Bankruptcy and Insolvency Law: Bill C-55, Statute C.47 and Beyond**, (Toronto: LexisNexis Canada Inc., 2007)

Hy Bloom (along with C. Webster) eds., **Essential Writings in Violence Risk Assessment and Management** (CAMH Publications, 2007)

Ken Jull (along with Prof. Kent Roach and Justice Todd Archibald), **Regulatory and Corporate Liability: From Due Diligence to Risk Management**, (Canada Law Book, 2004, Student Edition 2008)

Harvey Kirsh, **Kirsh's Index to Canadian Construction Law Literature**, with Foreword by Rt. Hon. Beverley McLachlin, Chief Justice of the Supreme Court of Canada (Thomson Carswell, 2007)

Albert H. Oosterhoff, **Oosterhoff on Wills and Succession: Text, Commentary and Materials**, 6th ed. (Toronto: Thomson / Carswell, 2007)

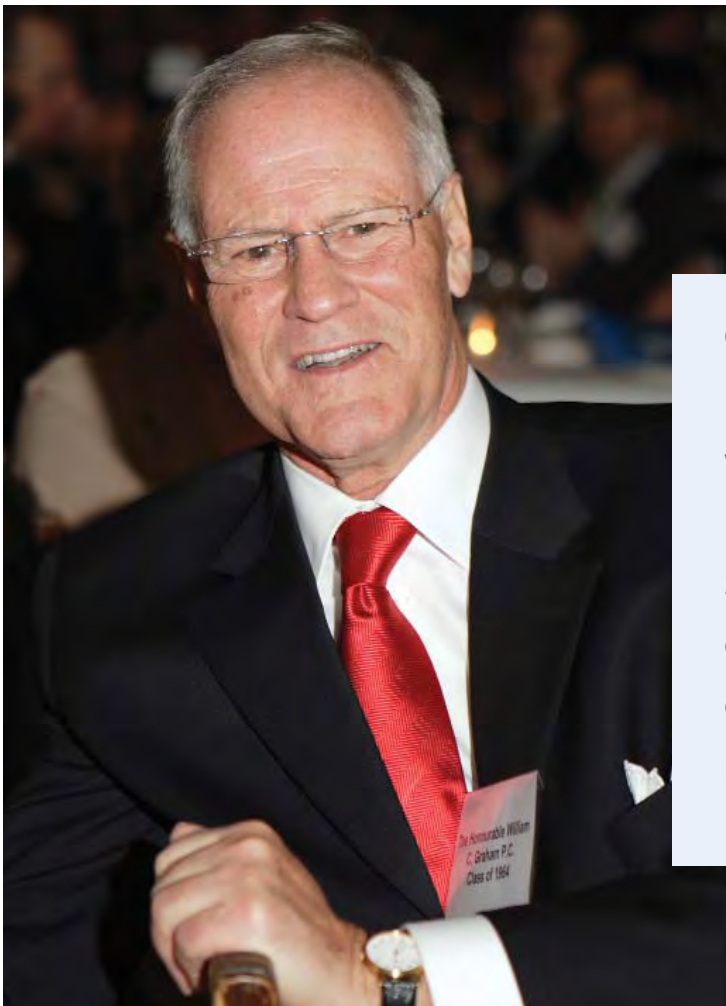
Eric M. Roher (along with Melanie A. Warner), **Ontario Employment Standards Act: Quick Reference Guide**, (Thomson Carswell, December 2007, 2008 Edition)

Eric M. Roher (along with Simon A. Wormwell), **An Educator's Guide to the Role of the Principal**, Second Edition, (Canada Law Book Inc., April 2008)

Peter Rosenthal (along with Ruben Martinez-Avendano), **An Introduction to Operators on the Hardy-Hilbert Space**, (Springer, New York, 2007)

Justice Richard Schneider, **The Annotated Ontario Mental Health Statutes**, Fourth Edition, (Irwin Law Books, 2007)

# The Hon. Bill Graham '64 Receives 2008 Distinguished Alumnus Award



On a blustery February evening, the Great Hall at the University of Toronto's Hart House was full of warmth and good wishes as the Hon. William (Bill) Graham '64 received the 2008 Distinguished Alumnus Award for his extraordinary public leadership, significant contributions to the legal profession, and lifelong commitment to community service.





Bill Graham (right), recipient of the Distinguished Alumnus Award, congratulates Arif Virani '98 (left), who was also honoured that evening with the Ann Wilson and Robert Prichard Award for Community and Professional Service. The Wilson-Prichard Award was recently established by former Dean, Ron Daniels and Joanne Rosen, along with the Hon. Rosalie Silberman Abella and Professor Irving Abella, to honour the exceptional careers and contributions to public life of Rob and Ann.

**G**raham, who is currently the Chancellor of Trinity College and was on the law faculty for 14 years (from 1980 to 1994), has had an extraordinary career that has seamlessly woven together his academic and public lives. "In addition to being a well-loved teacher and mentor at the law school, Graham's notable career spanning more than 40 years exemplifies in a very tangible way the critical bridge between scholarly research and the broader world of public service," said Dean Mayo Moran.

First elected a Liberal MP for Toronto Centre-Rosedale in 1993, Graham served from 1995 to 2002 as chairman of the standing committee of the House of Commons on foreign affairs and international trade. He was appointed Minister of Foreign Affairs in January 2002 under former Prime Minister Jean Chrétien and Minister of National Defence in July 2004 in the government of Paul Martin. In February 2006, he was appointed Acting Leader of the Official Opposition, a position he held until last December.

Admirers, friends and past students of Graham, including Professor Karen Knop '99, the Hon. Bob Rae '77 and Ian Mallory '84, took the podium following dinner to speak about the magnitude of Graham's lifelong contributions to Canada and the world. Professor Knop, who began teaching at the faculty just as he was preparing to leave the academy for the next phase of his career in public service, recounted Graham's deep understanding and knowledge of international law and some of the memorable contributions he has made.

"When Bill went to Ottawa, he didn't leave his commitment to international law behind, and this is one of the many

things about Bill that inspires so much respect and affection," said Professor Knop. "After having served as both foreign minister and minister of defence, Bill returned to U of T with a complex sense of the new challenges for international law, and as strong a commitment as ever."

*"In addition to being a well-loved teacher and mentor at the law school, Graham's notable career spanning more than 40 years exemplifies in a very tangible way the critical bridge between scholarly research and the broader world of public service."*

*Dean Mayo Moran*

Professor Knop also noted Graham's particular pride at ratifying the United Nations Convention on the Law of the Sea (UNCLOS) on behalf of Canada, and his decision regarding Canada's non-participation in the Iraq war. These, she said, are among the highlights of his diplomatic career.

Throughout his illustrious and high profile career, Graham has also been an inspirational role model to students interested in international issues. "Bill's vision has influenced a generation of students, many of whom have gone on to teach and practice in the field, including Kris Astaphan and Ian Mallory who are sitting in front of me today," said Dean Moran.

While some aspects of legal education have remained the same over the past 40 years, Dean Moran noted that students today have a new appetite for international law courses and opportunities to work abroad.

*Virani has done pro bono work with the African Canadian community, the Lawyers Feed the Hungry program, and participated in mentorship schemes for minority and underprivileged youth administered by both the Law Society's Equity Initiatives Department and the Ministry of the Attorney General's Adopt-a-School program.*



Arif Virani '98 (middle) with family members



Dean Mayo Moran



Ian Mallory '84

“Bill helped to take the U of T curriculum beyond the basic courses in public international law and private international law,” said Dean Moran. “In 1992, he wrote that Canadian legal education had a long way to go in teaching international trade law if it was going to catch up with the experience and sophistication of the US trade bar and equip Canadian lawyers to make the Canada-US Free Trade Agreement work for Canada. And he was an important part of that effort, writing on international commercial arbitration, the Free Trade Agreement, NAFTA, and the comparison with the EU. Those were heady days – the students had the feeling of being in on the start of something big,” added Dean Moran.

The evening was also a moment to celebrate and honour Arif Virani, who graduated on the Dean's Honour List in 1998 and who was chosen this year to receive the Ann Wilson and Robert Prichard Award for Community and Professional Service, which was spearheaded by former Dean, Ron Daniels. With family and friends proudly looking on, Virani accepted his award for demonstrating the highest standards of professional integrity, excellence and leadership, and for important contributions to the legal profession and community.

In a touching speech, Virani acknowledged the tremendous compliment paid to him by fellow law school alumni, many of whom he noted have distinguished records of pro bono and community service of their own. Pausing to thank the audience for ‘indulging him’ a moment to reflect upon the importance of community work for the legal community, Virani

spoke with passion about the deep meaning he derives from his work, and how it has affected his own personal and career development.

A volunteer and board member with the South Asian Legal Clinic of Ontario (SALCO) for 6 years, Virani has also done pro bono work with the African Canadian community, the Lawyers Feed the Hungry program, and participated in mentorship schemes for minority and underprivileged youth administered by both the Law Society's Equity Initiatives Department and the Ministry of the Attorney General's Adopt-a-School program.

He is currently a Crown Attorney in the Constitutional Law Branch at the Ministry of the Attorney General for Ontario. This year, he is on leave, doing an 18-month contract with the Commonwealth Human Rights Initiative in New Delhi addressing the issues of police reform and police accountability in the Indian subcontinent.

The Faculty of Law was delighted to be able to recognize two such outstanding members of our legal community and to welcome back family, friends and alumni to share the important celebration of excellence and leadership in the legal profession.

“Bill and Arif represent the very best of what is possible to achieve for one's own career and for the community and country with a legal education. We are deeply honoured to be able to count them among our alumni.,” added Dean Moran. ■

# New Asper Centre for Constitutional Rights

The Faculty of Law is delighted to announce the creation of a visionary new Constitutional Law Centre that will be the first of its kind in Canada and that will bring together academics, policy-makers, practitioners, students and others interested in conducting important constitutional law research, policy, advocacy and teaching.

The Asper Centre for Constitutional Rights was made possible by an unprecedented gift from recent U of T law graduate, lawyer, businessman, and philanthropist David Asper '07 who recently completed a Masters of Law at U of T. Mr. Asper's gift of \$7.5 million dollars is the largest gift ever made to a law school in Canadian history, and will establish the U of T Faculty of Law as the premiere institution in Canada for constitutional legal scholarship.

The multi-faceted Centre will be dedicated to the protection of fundamental rights and freedoms guaranteed by the Canadian constitution. Through legal education, research and advocacy, the Centre will harness and build upon existing strengths at the Faculty of Law and will secure Canada's rightful place as an international leader in the area of constitutional reform.

David Asper has had a lifelong interest in the Canadian Charter of Rights and Freedoms and a particular professional commitment to the rights of the wrongfully accused. But it was not until his enrollment in the masters program at the U of T law school that he first began considering the best way in which Canadian constitutional rights could be studied, upheld and protected. During discussions with fellow students and professors, and having serious concerns about the implications of the cancellation of the Court Challenges Program, he was inspired to take action.

Long-term plans for the Centre include supporting a wide range of activities such as faculty scholarship, student internships, national and international conferences, speakers and fellows. The cornerstone of the Centre will be a Constitutional Rights Clinic that will take on critical constitutional cases where important rights are at stake.

On Friday September 5, 2008 the law school will celebrate the opening of the Asper Centre for Constitutional Rights with a special visit and several lectures given by Rabinder Singh, one of Great Britain's leading Human Rights Lawyers and a member of the Matrix Law Chambers.

Mr. Singh will be at the Faculty September 5th giving a keynote address to our first year class on public interest litigation and the impact of the Canadian Charter around the world. That afternoon, the Faculty will host public interest lawyers and constitutional litigators from around the country in a discussion with Rabinder and others on constitutional litigation strategies for the next 25 years of the Charter. Mark the dates on your calendars now, and watch for upcoming announcements about how to reserve your seat at this very special lecture.



(L-R): Dean Mayo Moran, David Asper '07 and U of T President David Naylor

## Singapore and London Chosen as First Sites for Thematic Term Away

In the new globalized economy of the 21st century, lawyers are increasingly being called upon to understand and advise clients in matters that cut across different legal systems, cultures, and political boundaries. As the world shrinks, the importance of transnational law and international law grows.

To prepare students for the new reality of practice in the global legal environment, this fall the U of T Faculty of Law will launch an innovative new law program in two international locations: Singapore and London.

The "Thematic Term Away" program, or TTA for short, is the latest benefit of the faculty's emerging partnerships with a select group of the world's leading law schools.

The TTA will allow third-year students to spend a term at one of the two locations for an intensive learning experience designed around themes chosen to complement and build on the faculty's academic strengths in transnational, international, and comparative law.

Collaborative teaching is an integral part of the TTA. In London, U of T professors will teach thematic courses together with colleagues from partner law schools in Asia, Australia, Europe, Israel, and North and South America. The U of T law school will also host visiting students and faculty from partner law schools who will be given the opportunity to spend a term at U of T learning and teaching collaboratively.

The London program will operate out of the new Transnational Centre for Legal Studies in the heart of London's legal quarter. Participating law schools

include the University of Toronto, Georgetown Law, Free University of Berlin, the University of Fribourg in Switzerland, the Hebrew University of Jerusalem, Kings College London, the University of Melbourne, the National University of Singapore, the University of Sao Paolo, and the University of Torino. Professors Kerry Rittich and Stephen Waddams will be the first U of T faculty to teach at the new Centre. Professor Rittich will co-teach with colleagues from Georgetown and National University of Singapore, and Professor Waddams will team up with a Swiss colleague from the University of Fribourg.

A program will also launch at the National University of Singapore, which will host Professors Kent Roach and Ian Lee teaching on the theme of public and private transnational law.

The development of more formal partnerships with peer institutions in Canada and internationally has been recognized as being a critical key to the faculty's continued success as a leading legal research institution. With this in mind, Dean Moran asked her International Advisory Committee, made up of faculty, students and administrators, to explore ways in which U of T could enhance and broaden the academic and learning experience for students internationally by joining forces with premier law schools from countries around the world. "The Thematic Term Away was the imaginative result of that intense brainstorming," said Dean Moran.

**For more information about the London program please log onto Georgetown University Centre for Transnational Legal Studies at <http://ctls.georgetown.edu/>**

# Law School and Rotman Launch Business Leadership Program for Women

**IN THE FIRST PRIVATE SECTOR-ACADEMIC PARTNERSHIP** of its kind in Canada, three of Canada's leading law firms teamed up with the Faculty of Law and Rotman School of Management to make an unprecedented educational investment in women lawyers.

*Business Leadership for Women Lawyers* is a three-day intensive professional development program which was designed specifically to help women in the legal profession build professional confidence and acquire relevant business skills in order to advance within their firms. The first offering of the program, which ran from April 9 – 11, was designed by the two faculties along with expertise and input from three of Canada's leading law firms, Blake, Cassels & Graydon LLP, McCarthy Tétrault LLP, and Osler, Hoskin & Harcourt LLP, who sponsored the program.

"The sponsoring firms have shown tremendous leadership and vision by investing in this new partnership between the law and business faculties at U of T and by providing significant financial support for the development of the program," said Dean Moran. "We are grateful for their invaluable expertise which helped to shape the curriculum. Without their help, this program simply would not have been possible," she added.

The program is designed to give female lawyers a better understanding of the economics of the business of law and its impact on career development, and equip them with the business tools they will need to be influential leaders. "We are

very enthusiastic about being part of this important initiative to support the advancement of women in the legal profession. Women, as a group, can face different career challenges than men and there's a real need for programs such as this to help women navigate these challenges so they'll continue to view private practice as a viable – and attractive – option," said Dale Ponder, Managing Partner of Osler, Hoskin & Harcourt LLP.

The target group for the first session was high-potential women lawyers in practice for five to eight years since their call to the bar who aspire to management or partnership positions. "Women at the mid-point of their careers need to hold on, break through and succeed in becoming partners. We think Rotman's new program for lawyers will show them how. They'll learn how to negotiate for themselves and capitalize on their strengths. They'll sharpen the political management of their careers, which is crucial in this profession," said Kirby Chown, Regional Managing Partner, McCarthy Tétrault.

Rob Granatstein, National Managing Partner, Blake, Cassels & Graydon LLP said: "Women are an essential part of our firm and this profession. The fact is that women in business and the professions face unique challenges. This program with its emphasis on leadership skills will further equip strong women lawyers to advance within the profession."

Over 20 participants attended the inaugural program which ran from April 9-11. For more details about the program and future offerings please log onto the Rotman School of Management web site at [www.rotman.utoronto.ca](http://www.rotman.utoronto.ca)



## ABORIGINAL TRADITIONS COME TO LIFE AT LAW SCHOOL POW WOW

**ALMOST 70 FACULTY, STUDENTS AND STAFF** gathered together in the Rowell Room with members of Toronto's Aboriginal community for the third annual Pow Wow and Fall Feast held on November 13 and hosted by the Aboriginal Law Students' Association. This unique event combined the celebratory coming together of First Nations and the traditional Métis feast

of thanksgiving for successful fall harvests. Each November the law school celebrates this important cultural tradition for Canada's Aboriginal Peoples with the hope of connecting the wider student body with Aboriginal culture.

"As law students at U of T, we spend a considerable amount of class time discussing how Canadian Law has been applied to Aboriginal Peoples," said

Austin Acton, a third-year Métis student. "But most law students know little about Aboriginal culture as it is today," Acton added. "First and foremost, the Fall Feast and Pow Wow is a chance for everyone at U of T – faculty, staff, and students alike – to meet and learn more about Aboriginal Peoples. It's an event that brings together a wide diversity of people including law students of all backgrounds, elders from First Nations House, dancers, drummers, and Aboriginal students from other parts of the U of T community. For many at the event it's the first time they have heard a prayer in Oneida, taken part in a smudge, or seen a jingle dance."

The Feast was also a great opportunity for the Aboriginal law students to show off their singing, dancing, and cooking talents including moose stew, deer meatballs, and wild rice casserole.

"As in previous years, the mood was apprehensive at first until the eating and dancing began," said Acton. "Once things got going though, there was a strong sense of camaraderie and acceptance. We hope the Feast reminds everyone that Aboriginal Peoples are alive and vivid in Canada, and expressing some of their own legal traditions," he added.

# FACULTY LAUNCHES CENTRE FOR PROFESSIONALISM AND ETHICS

The faculty's new Centre for Professionalism, Ethics and Public Service (PEPS) officially launched on April 4th with its inaugural symposium "Can Legal Ethics be Taught?". Under the leadership of Professor Lorne Sossin, who will serve as the inaugural Academic Director of the Centre, the symposium tackled a number of important questions and issues including: what is the future of ethics in legal education; can legal ethics be taught in the classroom, or is an experiential learning environment required; and is there a role for legal regulators, law firms and legal organizations in teaching legal ethics.

Guest speakers and moderators represented leading academic institutions, government and non-governmental organizations including Janine Benedet (UBC); Joseph Cheng (Dept of Justice); Brent Cotter (Saskatchewan); Richard Devlin and Jocelyn Downie (Dalhousie); Trevor Farrow, Allan Hutchinson, Janet Leiper, Janet Mosher, and Robert Wai (Osgoode); Avvy Ya-Ya Go (MTCSALC); Randal Graham and Stephen Pitel (Western); Alice Woolley (Calgary); Paul Paton (Queen's); and Freya Kristjanson (BLG); as well as U of T Faculty of Law Professors Michael Code, Trudo Lemmens, Dean Mayo Moran, Lorne Sossin and Adam Dodek.

"The goal of this new Centre is to broaden and deepen our understanding of professionalism, ethics and public service, and the relationship between them. It will respond to the often invoked decline of professionalism among lawyers and the perception of self-interested lawyers in the eyes of the

public," said Professor Sossin.

The Centre will bring together leading voices from the spheres of academic, practice, judicial and public interest communities, and forge stronger links between the study of law, the practice of law, and the implications of law. "We see it as a catalyst for dialogue about the capacities, judgment and actions necessary for effective lawyering, and about a commitment to community leadership and social justice as essential to becoming a 'good' lawyer," he added.

In its first few years of operation, the Centre will be focusing primarily on three spheres including academic programming, career and professional development and public service and student leadership. Other plans for the Centre include a judge-in-residence program, ethics and public interest fellowships, an Ethics, Law & Film series of public lectures, a student retreat on Professionalism, Multiculturalism & Inclusion, and a Working Paper series on the Pro Bono Public experience in Canada.

**For more information about the Centre log onto the Faculty of Law web site at [www.law.utoronto.ca](http://www.law.utoronto.ca).**



(L-R): Brent Cotter, Saskatchewan; Alice Woolley, Calgary; Randal Graham, Western; Janine Benedet, UBC; and Paul Paton, Queen's

## Students and Faculty Help Win Omar Khadr Appeal at Supreme Court of Canada

**ON WEDNESDAY, MARCH 26,** U of T law students and professors appeared as interveners before the Supreme Court of Canada as part of Canadian Guantánamo detainee Omar Khadr's ongoing legal battle to obtain disclosure of documents held by the Canadian government and thought to be relevant to charges brought against him in the United States. The Federal Court of Appeal previously ordered the documents be disclosed, and the Canadian government appealed that decision to the Supreme Court.

Students enrolled in the U of T law school's International Human Rights Clinic worked closely with law Professors Audrey Macklin and Nehal Bhuta, lawyers Tom Friedland, Gerald Chan and Monica Creery of Goodmans LLP, and clinic lawyers Darryl Robinson and Sarah Perkins over the past months to prepare for the hearing. The Clinic made joint submissions with Human Rights Watch as third party interveners in the case. Professor Sujit Choudhry also contributed to the case as co-counsel for the BC Civil Liberties Association, who were third party interveners.

"This case was a tremendous opportunity for our students to help clarify an important human rights issue for our country," says IHRP Acting Executive Director Sarah Perkins. "Law students and professors partnered with law firms and human rights organizations to make submissions to the Supreme Court of Canada that will ultimately help to shape the way our government conducts itself internationally," she adds.

The submissions of the Clinic and Human Rights Watch focused on the conduct of Canadian officials who traveled to Guantánamo in February and September of 2003 to interview Omar following his 2002 arrest in Afghanistan.

Subsequently, the Canadian officials passed summaries of the information collected in the interviews to the RCMP and U.S. authorities.

The joint arguments were based on concerns that the conduct of the interviews and transfer of information obtained during the interrogation of Omar to the United States violated Omar's rights under the International Covenant on Civil and Political Rights, and his rights as a child under the United Nations Convention on the Rights of the Child. Disclosure is necessary to Omar's ability to make full answer and defense to the charges brought against him.

On May 23, 2008 the Court released its judgement, which unanimously held that Omar Khadr was entitled to the disclosure of documents and information provided by Canada to the U.S. authorities, and that Canada violated its international human rights obligations. "We are enormously proud of the contribution our students and faculty made to this important case," says Perkins.



(L-R): Cory Wanless (3L), Tom Friedland (Goodmans LLP), Prof. Audrey Macklin, Gerald Chan (Goodmans LLP), Adj. Prof. Darryl Robinson, Anatoly Vlasov (3L), Prof. Nehal Bhuta, Abby Deshman (3L), Sarah Perkins (IHRP Director), Ilana Bleichert (2L), Sayran Sulevani (3L), Josh Cramer (3L).

## Toronto Mayor David Miller Speaks at 2008 Goodman Lecture

Negotiations between cities and the provincial and federal governments are in newspaper headlines almost every day. Responsibility for social services, transportation and environmental programs are just a few of the issues that can create prolonged, and at times strained relations between different levels of government.

Toronto Mayor, David Miller ('84) addressed this timely issue as the guest speaker at the faculty's 2008 Goodman Lecture. In his address before a crowd of over 100 faculty, students and alumni, *"Toronto & Canada's Big Cities: The Key to National Prosperity"*, Miller described the urgent need for Canada to catch up with other nations around the globe where city governments are already recognized as the "economic engines" of their countries.

"It was quite impressive to hear the Mayor marry together the concepts of social cohesion and a city's economic well-being. He confirmed that both ideas have to work together, and that they are inter-dependent," said Professor Sujit Choudhry, who attended the lecture. "He spelled out the connection perfectly and I think it's wonderful that he makes those associations as Mayor of the city," he added.



(L-R): Dean Mayo Moran and Mayor David Miller '84

The D.B. Goodman Fellowship was established in memory of the late David B. Goodman, Q.C. of Toronto by members of his family, friends and professional associates with the mandate of bringing a distinguished member of the practising bar or bench to the law school for either teaching opportunities, informal discussions or public lectures.

## Faculty Takes In-Depth Look at Canadian Policies on Climate Change

Shortly after former U.S. Vice President Al Gore was awarded the Nobel Prize for his environmental work, leading Canadian and international experts met at Hart House for an interdisciplinary conference on climate change co-sponsored by the U of T Faculty of Law.

The November conference brought together policy ideas and suggestions from the legal, political science, economics, and sociology academic and research communities. Discussions were held on the costs, opportunities and impacts of regional and global carbon markets, the proper mix of domestic policy tools for Canadian climate change action, the parameters of Canadian energy policy and the dynamics that propel or hinder Canadian policy processes. The keynote speaker was Professor Scott Barrett, from the Paul H. Nitze School of Advanced International Studies, Johns Hopkins University; while a lunch address was given by Professor Thomas Homer-Dixon, from the Trudeau Centre for Peace and Conflict Studies, here at the University of Toronto.

Professor Jutta Brunnée says that the conference was intended to promote reasoned, high-level debate on one of today's key public policy issues. "The Faculty led a highly successful



collaboration with a broad range of academic units from across campus. We were instrumental in shaping a program that engaged a large interdisciplinary audience comprised of students, faculty, government and private sector experts, non-governmental organizations and the wider public," she said.

Following the conference, the research papers were compiled and edited by Professors Brunnée, Green, and Duff, and have been published by the University of Toronto Press into a groundbreaking book "A Globally Integrated Climate Policy for Canada." The publication, an important contribution to Canadian literature on environmental law and policy, can be ordered through the University of Toronto Press at [www.utppublishing.com](http://www.utppublishing.com).

# Ontario Judges, Practitioners, Benchers and Law Faculty Join Forces to Combat Hatred

With issues of reasonable accommodation, hate crime and racism in the headlines on almost a daily basis, there was no better time for the faculty's second annual conference, "*Combating Hatred in the 21st Century: Balancing Rights, Freedoms and Responsibilities*." The day long conference was held on November 12 before a packed audience of diverse members of the legal and Toronto communities. A number of issues were explored throughout the day including the nature and impact of hate crime, challenges confronting racism, discrimination, building bridges, and the impact of international conflicts on Canada.

"We believe that the legal community has an obligation to bring these issues to the forefront of discussion among our peers for the benefit of the entire community," said Professor Lorne Sossin, one of the conference organizers. "This conference was a great opportunity to bring together students, practitioners, judges and grass-roots

organizations to continue a conversation about some of the most challenging issues we face as Canadians relating to hatred, freedom and our Charter of Rights and Freedoms," he added.

The conference was co-chaired by The Honourable Douglas Cunningham, Associate Chief of the Superior Court of Justice, and Dean Mayo Moran. The planning committee included several justices of the three levels of the Ontario courts, as well as lawyers, benchers, and representatives of a number of different cultural, ethnic and religious communities who are impacted by hate and hate crimes. Conference proceedings will be published this Spring and made available in PDF on the faculty's website. For more information on the conference or to view an archived web cast of the proceedings, log onto the faculty's web site under Conferences at [www.law.utoronto.ca](http://www.law.utoronto.ca).

## INTERNATIONAL EVENTS A TIMELY REMINDER OF IMPORTANCE OF JUDICIAL INDEPENDENCE

Fall newspaper articles about the political unrest in Pakistan served as an acute reminder to the world about the importance of judicial independence. On November 29 and 30, leading Canadian and international legal minds gathered at the U of T Faculty of Law and the Law Society of Upper Canada for the conference "*Looking Backward, Looking Forward: Judicial Independence in Canada and the World*."

Organized by Professor Lorne Sossin and Visiting Scholar, Adam Dodek, and co-sponsored by the law school and the new School for Public Policy and Governance at U of T, the impetus for the conference was the tenth anniversary of the Supreme Court of Canada's landmark judgment in the *Provincial Judges Remuneration Reference*, which recognized judicial independence as a fundamental norm in our constitutional order.

"Judicial independence is a concept that is frequently mentioned but rarely discussed or analyzed in any systematic way," said Sossin. "The conference was a unique opportunity to bring together scholars and public policy makers to discuss the important connection between judicial independence and democracy, and link the discussion of the issue in Canada to broader events around the world."

The opening address was delivered by Justice Richard Goldstone (former Chief Prosecutor for the International Criminal Tribunal in The Hague and retired Justice of the Constitutional Court of South Africa) on the challenges of judicial independence. Justice Goldstone spoke about the changing characteristics of judicial independence during South Africa's

transition from apartheid to a multi-racial democracy. An additional panel discussion on the importance of judicial independence in democracies included internationally renowned U of T political science Professor Janice Gross Stein, former Toronto Star Publisher John Honderich, the Faculty's own Professor Lorraine Weinrib and was moderated by Dean Patrick Monahan of Osgoode Hall Law School.

"The world looks to Canada as a model for judicial independence and too often we simply take it for granted," said Dodek. "The conference provided a fabulous opportunity to reflect upon judicial independence in Canada and open a broader international discussion about its importance and its challenges."

Additional speakers and panelists included Peter Hogg, Ontario Deputy Minister of Aboriginal Affairs Lori Sterling, Jamie Cameron, CBA Past-President J. Parker MacCarthy, the Hon. Robert A. Blair, Andrew Green, Ben Alarie, Karen Selick, the Hon. Pierre Dalphond, Fabien Gélinas, Carol Rogerson, Rollie Thompson, Peter Russell, the Hon. Robert Sharpe, Penelope Andrews (CUNY School of Law), Graham Gee (Oxford) and Amnon Reichmann (Haifa University).

Papers from the conference as well as additional material will be published by the University of Toronto Press in a collection edited by Sossin and Dodek. For more information please check the faculty's web site under Conferences at [www.law.utoronto.ca](http://www.law.utoronto.ca).

## Diversity and Reparations: Musing and Movements

Each year, a generous gift from John and Mary A. Yaremko provides the faculty with the opportunity to enrich the curriculum with a range of initiatives in the area of human rights and multiculturalism. The highlight of the Yaremko Program is the annual Forum. This year, the Yaremko Forum featured Professor Adrienne D. Davis, the Reef C. Ivey II Professor of Law at the University of North Carolina School of Law, who delivered a stirring public lecture on *Diversity & Reparations: Musings on the Movements*.

Professor Davis has a particular interest in conceptions of justice and reparations, work-family conflicts, and the gendered and private law dimensions of American slavery. Her presentation was a unique window into one of the most contentious issues of American history.

"We are enormously grateful to the Yaremkos for their generosity in establishing this remarkable fund," said Kate Hilton, Assistant Dean, Alumni and Development. "Endowments such as theirs support important co-curricular opportunities for students to learn beyond the classroom. And, because of the public nature of the Yaremko Forum, we are able to share cutting-edge ideas about human rights and multiculturalism with the broader community."

For more information about the Yaremko Forum, log onto the faculty web site under Conferences at [www.law.utoronto.ca](http://www.law.utoronto.ca).

## Best and Brightest International Commercial Law Experts Converge at Faculty of Law

### THE ANNUAL WORKSHOP ON COMMERCIAL AND CONSUMER LAW

has long become a familiar fixture of the fall program at the Faculty of Law. This year's workshop was held on October 19 and 20 and brought together more than one hundred academics, judges, government officials and legal practitioners from Canada, Australia, England, Germany and the United States to participate in a program that lived up to the workshop's



Prof. Jacob Ziegel

reputations of relevance, diversity and intellectual rigor.

The topics included two sessions on the challenges of globalization seen from a Canadian perspective, modernization of not-for-profit corporation laws in Canada and the U.S., comparative approaches to the enforcement of consumer protection laws, and a tri-

partite analysis of the recent Supreme Court of Canada decision in *Kingstreet Investments v. New Brunswick*. Also very well received was a lively panel discussion on important features of insolvency law reform contained in 2005 federal legislation as interpreted by contributors to a

book of essays edited by Professors Tony Duggan and Stephanie Ben-Ishai.

The Hon. Bob Rae ('77), former premier of Ontario, was the guest speaker at the Friday evening dinner at the University of Toronto Faculty Club. Rae's address focused on Canada's need to dismantle the many legal barriers that still hamper the free flow of goods, services, and peoples across Canada if we are to meet the challenges of globalization in the 21st century.

The Annual Workshop is co-sponsored by nine law schools across Canada, and also received much appreciated financial support last year from the Office of the Superintendent of Bankruptcy in Ottawa and from the following individuals and law firms in Toronto, Vancouver and Montreal: James C. Baillie, Q.C., Bull Housser & Tupper LLP, Vancouver, Fraser Milner Casgrain LLP, Toronto, Lerner LLP, Toronto, McMillan Binch Mendelsohn LLP, Toronto, Osler, Hoskin & Harcourt LLP, Toronto, and professor Stephen A. Scott, Montreal.

As in previous years, Emeritus Professor Jacob Ziegel played a lead role in organizing the Annual Workshop, along with Professor Tony Duggan, and Professor Stephanie Ben-Ishai of Osgoode Hall Law School.

## Annual CLEA Conference

The Canadian Law and Economics Association (CLEA) held its annual meeting at the law school from September 28th – 29, with Professor Michael Trebilcock delivering the keynote lecture



Prof. Michael Trebilcock

on *Property Rights and Development: The Contingent Case for Formalization*. The first conference was held in 1992 with thirty attendees, but in recent years it has grown both in size and stature.

"The CLEA conference brought together 100 law and economics scholars from the United States, Canada, Europe and beyond," said Prof. Trebilcock. "It has become one of the premier law and economics conferences in the world and provides a forum for the presentation of more than thirty research papers on a vast range of topics that are subject to critical review by fellow scholars," he said.

The conference, he added, gives Canadian scholars in particular a chance to present their work in progress to a wide range of experts in their fields. Conference proceedings are all published on the CLEA web site, and are widely read by the world's leading lawyers, economists and public policy makers. For more details, log onto the CLEA web site at [www.canlecon.org](http://www.canlecon.org).

## High School Program Launches New Initiatives

**SPEARHEADED BY TWO LAW ALUMNI**, Mary Jackson ('92) and Tariq Remtulla ('05), the LAWS high school program at the U of T Faculty of Law has recently partnered with Toronto law firm Blake, Cassels & Graydon LLP to offer a workplace mentoring program to high school students. Over 25 of the firm's lawyers have volunteered to provide guidance and support to grade 11 and 12 students who attend Central Technical School.

"This program enables professionals in the field to connect with young people who need positive role models. The lawyers encourage the students to feel comfortable in a professional work environment, and provide them with a unique opportunity to pursue their interest in the law," says Alexis Archbold, Executive Director of the LAWS program.

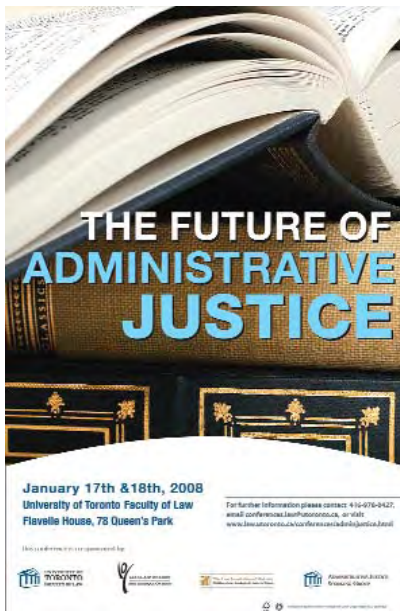
Due to the overwhelming success of its 3-year pilot phase at Central Technical School and Harbord Collegiate, LAWS is also poised to expand its programming to a third partner school within the Toronto District School Board. Monarch Park Collegiate (MPC) is a vibrant secondary school in Toronto's east end that welcomes large numbers of students from low-income communities, many of whom are newcomers to Canada. This September 2008, LAWS will be

starting a multi-faceted law-related youth program at MPC modeled after the existing programs in place at the other two schools.

A third new initiative being offered by LAWS this summer in partnership with U of T New College, is a one-week "mini-law school" experience that gives high school students an extraordinary glimpse into the realities of criminal law. Participants will be immersed in the steps of a criminal proceeding from the time the alleged crime is committed, to the collection of evidence, preparation of the case, the trial, and sentencing. The week will culminate with a mock trial presented by members of the class. Three 1st-year law students have been hired to coordinate the program and teach the students. Professors and legal practitioners will also help to expose students to a broad range of expertise in the legal profession. Day trips will include visits to court houses, law firms, and clinics.

Participants will be required to pay a fee, but all profits will be invested back into the faculty's outreach activities aimed at marginalized youth. **For more information about the summer program and other new initiatives, log onto the faculty's web site at [www.yp.utoronto.ca/law](http://www.yp.utoronto.ca/law).**





## The Future of Administrative Justice Examined

Academics, members of the tribunal sector and government policy-makers gathered at the law school to examine and debate improvements that could be made to administrative tribunals in Ontario and other jurisdictions. The event, which was organized by Professor Lorne Sossin, aimed to broaden the understanding of the issues and to create a

richer knowledge base of research and analysis.

"In recent years, there have been several jurisdictions which have overhauled their administrative tribunal sectors. The debate has not been given broad attention in academic research and literature," said Sossin. He added that there are also important developments in peer jurisdictions, especially in B.C., Quebec and the United Kingdom, which can and should inform the dialogue in Ontario.

Speakers and moderators at the conference included Lord Justice Robert Carnwath, Professor France Houle, Dean Phillip Bryden, Professor Lorne Sossin, Ron Ellis, Kathy Laird, Adam Dodek, Professor Audrey Macklin, Professor Laverne Jacobs, Deborah Roberts, Lillian Ma, Justice John Evans and Integrity Commissioner David Mullan.

Papers presented at the symposium will provide a foundation for further academic research and policy development. The source materials will also form a base for community legal education in law schools, and public legal education within Ontario's legal clinics.

## Judge Leo Strine, Delaware Court of Chancery Speaks on Global Corporate Social Responsibility

In the wake of the Enron, Martha Stewart, and other 'white collar' scandals of the early 2000s, the nature of corporate culture has started to receive close scrutiny in boardrooms and academic lecture halls throughout North America.

In late September, American Judge Leo E. Strine, Jr., delivered a philosophical and at times entertaining lecture to alumni, faculty and students at the university's Isabel Bader Theatre on the nature of corporate culture and social responsibility. Strine is Vice Chancellor, Delaware Court of Chancery; Austin Wakeman Scott Lecturer in Law, Harvard Law School, Adjunct Professor of Law, University of Pennsylvania Law School and Vanderbilt University School of Law; Henry Crown Fellow, Aspen Institute.

Strine's lecture, *Human Freedom And Two Friedmen: Musings On The Implications Of Globalization For The Effective Regulation Of Corporate Behavior*, provided an overview of economic development and social responsibility ranging from the development of Marxism, Roosevelt's New Deal, the creation of the European Union and finally the issue of white-collar corporate crime. The first "Friedman" under scrutiny was Milton Friedman. The second "Friedman" discussed was New York Times columnist Thomas Friedman.

Strine encouraged attendees to consider issues of minimum labour, environmental and consumer protection in a globally enforceable context. Ideally, he said, the United States would take a leadership role in working with other countries to enforce globally recognized standards for the ethical treatment of workers, and universal standards of conscientious corporate behaviour.



(L-R): Dean Mayo Moran, with Judge Leo Strine Jr. and Les Viner, Managing Partner, Torys LLP.

# Adjunct Professor Bradley McLellan “Retires” from Law School



(L-R): Dean Mayo Moran and Adjunct Faculty Member, Bradley McLellan

Friends and colleagues of Adjunct Professor, Bradley McLellan, gathered in the Rowell Room in late October at a faculty reception to celebrate McLellan’s ‘retirement’ from the law school. The special event was also an opportunity to thank all adjunct professors for their important contributions to the faculty.

McLellan, a partner at WeirFoulds LLP, has been an adjunct at the U of T Law School for 17 years, and has consistently received rave reviews from students for his organized, interesting and engaging way of teaching real estate law.

“Brad taught Real Estate Transactions longer than anyone else in the history of the Faculty,” says Professor Arnold Weinrib. “Of course he is one of Canada’s leading practitioners in the field. But he was also enormously popular among students for the right reasons – he made what seemed to be a dry technical field interesting. And he had an obvious commitment to the students.”

Bonnie Goldberg, Assistant Dean Students says that adjunct professors provide students with a unique window into the real-world legal issues that they contemplate in class. “We are so grateful to members of the practising bar who join our program to offer the students instruction in many different and complex areas,” she says.

“We seek out the leading practitioners in the field to deliver topical and cutting-edge lessons in the law. Bradley is a perfect example of how adjunct professors enhance and complement our academic program. He has taught several generations of law students the ins and outs of real estate law and will be sorely missed by students and faculty alike,” she adds.

McLellan is a Partner at WeirFoulds LLP, the Co-Chair of the firm’s Infrastructure & Public Projects Practice Group and the Chair of the Commercial Real Estate Practice Group. Some of his public sector work has included the development of significant infrastructure projects (such as rapid transit and a people mover system), sports and entertainment centres, and mixed use downtown redevelopment. Another one of his areas of expertise focuses on the purchase, sale, and financing of land, and providing advice on environmental issues to owners, purchasers and lenders.

In addition to his thriving practice, McLellan also manages to find the time to write, and is the co-author of *Real Estate Law* (4th edition, 1992), and *Condominium: The Law and Administration in Ontario* (1st edition, 1981). He has written extensively in the areas of infrastructure and public projects, real estate law, mortgage law, condominium law, and environmental issues in the purchase, sale and mortgaging of real estate.

Dean Moran presented McLellan with a certificate of appreciation, and thanked all adjunct faculty in attendance for their commitment to the law school and invaluable expertise. Chief Librarian Beatrice Tice was also on hand to give an overview of the library support services that are available to adjunct professors.

The Faculty of Law recognizes the outstanding contribution made by leading practitioners in their field who come to the Faculty of Law to lecture in their capacity as adjunct professors.

# Alumni Achievements

## 2007

### JULY

- Fifteen friends from the class of 1965 and their spouses met to celebrate the retirement of Senator **Dan Hays ('65)**, who was first appointed to the Senate in 1984 and Speaker of the Senate in 2001.

### OCTOBER

- **Melissa Kluger ('01)** released the first issue of her new magazine *Precedent: The new rules of law and style*, for young associate lawyers.
- **The Honourable Gloria J. Epstein ('77)**, Q.C. was appointed a Judge of the Court of Appeal for Ontario.
- **Supreme Court of Canada Justice Rosalie Silberman Abella ('70)** was inducted into the American Academy of Arts and Letters.

### SEPTEMBER

- **John Pitfield ('97)** was named to the list of "Up and Coming Lawyers" by *Mass Lawyers Weekly*.
- **Christopher Bentley ('79)** was appointed Attorney General for Ontario.

### NOVEMBER

- **Diana Juricevic ('04)** was chosen as a "future leader" in the *Globe & Mail* Top 100 Women Feature.
- *Lexpert magazine* named **Jim Russell ('92)** a Rising Star of the Canadian legal community.
- **Barry Leon ('74)** gave the Keynote Address at the 13th Annual Eid-ul-Fitr Celebrations of the Association of Progressive Muslims of Canada on Parliament Hill, entitled "Canada's Legal System: Should We Be Proud?"

## 2008

### JANUARY

- **Michael S. Richards ('99)** and **Ted P. Maduri ('99)** joined the partnership of Davis LLP.
- **John J.L. Hunter QC ('75)** became the President of the Law Society of British Columbia.
- **Michael Bussman ('99)** joined the partnership at Gowlings LLP
- **Sarit Batner ('98)** joined the partnership at McCarthy Tétrault LLP
- **David Butler ('73)** became a partner at Cassels Brock LLP
- **Ira G. Parghi ('97)** joined the partnership at Borden Ladner Gervais LLP

### FEBRUARY

- **Gus Karantzoulis ('00)** joined the partnership at Borden Ladner Gervais LLP
- **Julie Galloway ('90)** was appointed Vice President and General Counsel of FNX Mining Company Inc

### APRIL

- **Pam Shime ('95)** received an Undergraduate Teaching Award for teaching excellence in 2007/08 from the University of Toronto Students' Union and the Association of Part-time Undergraduate Students.

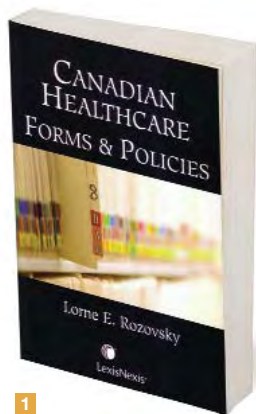
### JUNE

- **Kirby Chown ('79)** was presented with the 2008 President's Award of the Women's Law Association of Ontario for her outstanding service within the profession and her leadership role in advancing the position of women lawyers. She was also presented with the Law Society of Upper Canada Medal at a special ceremony on June 5, 2008.

## 2007/08 Adjunct Faculty

The U of T Faculty of Law would like to thank the following adjunct faculty members, many of whom are practitioners and alumni, for devoting their time and expertise teaching a variety of courses at the law school from April 2007 to April 2008. From Admiralty Law to Securities Regulation to Civil Litigation, Procedure & Professionalism, students benefit enormously from the knowledge and professionalism of adjunct faculty who bring an enormous breadth of experience in their respective areas of expertise, and enrich our program immeasurably.

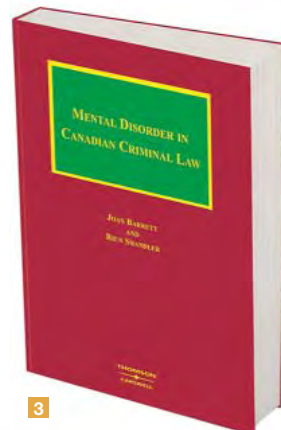
Susan Abramovitch	Alan Levy
Sandra J. Adams	Scott MacKendrick
George Adams	Stanley Makuch
Michael Battista	Michael Marrus
Stephanie Ben-Ishai	Neill May
Chris Bennett	Leslie McCallum
Bert Bruser	Leslie McIntosh
Donald Cameron	M. Paul Michell
Pascale Chapdelaine	Tim Murphy
David Cole	Carolyn Naiman
Paul Collins	Laura Nemchin
Jonathan Daniels	John Norris
David Denomme	Jordan Oelbaum
Adam Dodek	Albert Oosterhoff
John Emanoilidis	Paul M. Perell
Philip Epstein	Andrew Pinto
Joanna Erdman	Brian Radnoff
Bonnie Fish	Eric Roher
Sandra Forbes	Peter Rosenthal
Mitch Frazer	Peter Ruby
Barry Glaspell	Kristen Rundle
Benjamin Glustein	Douglas Sanderson
Randal Graham	Paul Schabas
Stephen Grant	Debra Stephens
Sue Gratton	Allan Stitt
Julie Hannaford	Danielle Szandtner
Susan Heakes	John Terry
Marc Isaacs	Beatrice Tice
Tom Johnson	Laura Trachuk
Glen Johnson	George Vegh
Kenneth Jull	Tanja Wacyk
Ari Kaplan	Garry Watson
Gordon Kirke	Barry Weintraub
Harvey Kirsh	Justice Warren Winkler
Patricia Koval	Joaquin Zuckerberg
Freya Kristjansson	
David Lepofsky	



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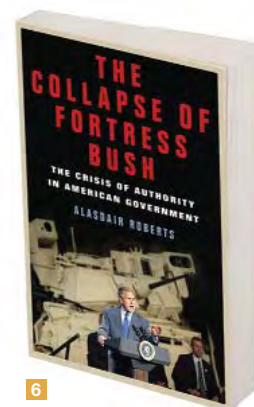
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### 1 CANADIAN HEALTHCARE FORMS & POLICIES

**Lorne E. Rozovsky ('66)**, QC, FCLM (hon), the only Canadian to be made an honorary fellow of the American College of Legal Medicine, has written his 18th health law book: *Canadian Healthcare Forms & Policies*, which was published in November 2007 by LexisNexis Canada.

### 2 HANDBOOK OF RESEARCH IN TRANS-ATLANTIC ANTITRUST

**Philip Marsden ('89)** has edited *The Handbook of Research in Trans-Atlantic Antitrust*. He is Editor-in-Chief of The Competition Law Forum and Senior Research Fellow, British Institute of International and Comparative Law, UK. This comprehensive research Handbook brings together cutting-edge legal and economic analysis and antitrust issues by leading experts from Europe, the US, Canada, Mexico and South America.

### 3 MENTAL DISORDER IN CANADIAN CRIMINAL LAW

**Joan Barrett ('95)** recently published *Mental Disorder in Canadian Criminal Law*, Carswell, 2007. This comprehensive guide covers all issues arising under Part XX.1 of the Criminal Code, including the NCR defence, fitness to stand trial, and the Review Board procedure and process. It also addresses how mental illness can play a role in criminal proceedings generally, such as in identifying a perpetrator of an offence, negating mens rea, and in mitigating sentences.

### 4 CANADIAN CONTRACTUAL INTERPRETATION LAW

**Geoff R. Hall ('91)** has published *Canadian Contractual Interpretation Law* (LexisNexis Canada, October 2007), which focuses on contractual interpretation in Canada. He is a litigation partner at McCarthy Tétrault LLP in Toronto.

### 5 GAAR INTERPRETED: THE GENERAL ANTI-AVOIDANCE RULE

**Alan M. Schwartz ('68)**, Q.C., Fasken Martineau DuMoulin LLP, is the Editor-in-Chief of *GAAR Interpreted: The General Anti-Avoidance Rule* along with Associate Editors: David D. Robertson, Peter W. Vair ('77), Ronald Nobrega ('92) and Paul F. Monahan. The publication deals with the general anti-avoidance rule whereby a transaction can be re-characterized where it was entered into primarily for tax purposes and is considered to be a misuse or abuse of the Income Tax Act.

### 6 THE COLLAPSE OF FORTRESS BUSH: THE CRISIS OF AUTHORITY IN AMERICAN GOVERNMENT

**Alasdair Roberts ('86)** has written *The Collapse of Fortress Bush: The Crisis of Authority in American Government*. New York University Press, 2008. Roberts' history of the past eight years of American politics has been described by critics as a work of rare insight that fills in many gaps in the public discourse.



**7 THE PERSONS CASE: THE ORIGINS AND THE LEGACY OF THE FIGHT FOR LEGAL PERSONHOOD**

The Honourable Robert Sharpe ('70) has co-authored with Patricia McMahon ('02), *The Persons Case: The Origins and the Legacy of the Fight for Legal Personhood* (U of T Press, 2007). This book considers the decision that declared women to be “persons” qualified for appointment to the Senate and Canada’s constitution to be a “living tree” in its political and social context. It examines the lives of the key players – the litigants, the politicians who opposed the appointment of women, the lawyers who argued the case, and the judges who decided it.

**8 BIOTECHNOLOGY AND THE CHALLENGE OF PROPERTY RIGHTS IN DEAD BODIES, BODY PARTS, AND GENETIC INFORMATION**

Dr. Remigius N. Nwabueze ('04) published his SJD thesis as a book: *Biotechnology and the Challenge of Property Rights in Dead Bodies, Body Parts, and Genetic Information* (Ashgate Press, 2007).

**9 L'ANALYSE ÉCONOMIQUE DU DROIT**

Prof. Ejan Mackaay ('77) and Stéphane Rousseau ('99) have published *L'analyse économique du droit* (Dalloz –Paris, 2007). It is the first book-length treatment of the economic analysis of law in French. To make the case for law-and-economics to the French-speaking legal community, the authors take law-and-economics insights to their home ground and apply them to numerous rules and institutions within the core areas of private and commercial law in the Quebec and French civil-law systems.

**10 E-COMMERCE LEGISLATION AND MATERIALS IN CANADA**

**11 HALSBURY'S LAWS OF CANADA – COMMUNICATIONS**

**12 CANADIAN FORMS & PRECEDENTS: COMMERCIAL TRANSACTIONS – INTELLECTUAL PROPERTY**

Sunny Handa '92 wrote three books in 2007. *E-Commerce Legislation and Materials in Canada*, is a guide to the legislation, model laws, policies, guidelines and summaries of leading cases relevant to e-commerce law in Canada. *Halsbury's Laws of Canada – Communications* sets out the law regulating telecommunications, broadcasting and radio-communications in Canada, as governed by statutes such as the Telecommunications Act, the Broadcasting Act and the Radio Communication Act. *Canadian Forms & Precedents: Commercial Transactions – Intellectual Property* is a comprehensive set of Intellectual Property forms and precedents, providing extensive coverage of copyright, industrial design, trademarks, patents, and private sector privacy laws.

“The publication by Ejan Mackaay and Stéphane Rousseau of their wonderfully ambitious and insightful book marks a significant contribution to achieving this broader perspective on legal education. We all owe them – exemplars of legal cosmopolitanism – an enormous debt of gratitude”  
Prof. Michael Trebilcock



# Catching Up with

# LINDA

# SHIN ('98)

After graduating from law school in the late 1990's, Linda Shin articulated at McCarthy Tétrault in Toronto and was hired back as a litigation associate. After more than three years in practice, she took a leave of absence in 2003 to work in the office of then Attorney General, the Honourable Michael J. Bryant. Linda returned to McCarthys in January 2006 and later that year left to join the Downtown Crown Attorney's Office.

*Nexus* caught up with Linda at the Old City Hall Courthouse where she spends most of her weekdays prosecuting criminal cases, and loving it!

### **Can you tell us a bit about your background before law school?**

My family came to Canada from Korea and in many respects my life growing up was the typical Canadian newcomer experience. My parents worked very hard and all of us kids helped out. For a time my family had a convenience store in downtown Toronto where I worked. It was just a stone's throw from the law school I would eventually go to, the Ontario Legislature I worked in and the law courts I work in now. I had a lot of fun growing up but I studied hard too allowing me to go to Queen's University for my undergraduate degree before going to U of T Law.

### What stands out most for you about your time in law school?

The size of the law school was the first thing that struck me when I arrived. The student body was smaller than my elementary school! It was such a great learning environment. I certainly worked hard in law school but it was a lot more fun than I expected. It's now 10 years since I graduated and as I reflect I have to say that it is all the fantastic people I remember: the remarkable professors and the very stimulating lectures and discussions we had, and of course all the wonderful students. The Class of 1998 was a larger-than-life cast of characters: people with brains, ambition, and most importantly great camaraderie.

### What led you to the Crown Attorney's Office?

My career path is not one that I had mapped out or could have predicted. I have always been interested in social justice issues, but didn't see a career in it while I was in law school or immediately after I graduated. I went to McCarthys, met so many great people there and most importantly really learned how to be a practicing litigation lawyer. But then an unexpected turn occurred. A partner in the firm approached me and asked if I'd be interested in applying for a job in a provincial Minister's office. The idea was to go on a temporary leave and gain some invaluable experience. I was intrigued and, though I didn't know at all what such a job would entail, I went for it and after an application and interview process, then Attorney General Michael Bryant took a chance on me.

During my time there, I had the honour of working with Minister Bryant in a variety of roles, from dealing with legislative matters, to policy, to daily issues that arose. As a lawyer, it was a wonderful experience to be involved in drafting a bill and seeing it through the legislative process to become law. I had the honour of working with amazing people on very interesting public policy issues while I was in the Attorney General's office. It was also the first time outside of law school that I was exposed to criminal law and I discovered that I really enjoyed it. After a couple of years, I felt the need to return to the more traditional practice of law and so I returned to my litigation practice at McCarthys. However, I soon became restless. I still wanted to be a litigator but I missed the public service and public interest aspects of my previous job. At that point, the only job that interested me was becoming an Assistant Crown Attorney. So, I said good-bye to Bay Street and was hired by the Downtown Crown's Office.

### What's the thing you love most about being a Crown Prosecutor?

*I feel privileged to be able to serve in this role and hope to continue in it. Working hard, taking on challenges, and making a difference; that is what motivates me.*

It's the public service aspect of the job that inspires me and drives me forward. I am also appreciative of my fantastic colleagues and the generally collegial environment of the criminal bar. As a lawyer, it is rewarding to be in court almost every day, and thinking on my feet. It is a fast-paced environment and you never know from day to day what to expect. I thrive on the unpredictability of each day and the opportunity to think more broadly about criminal and social justice issues.

### Are there things about the court system that you feel need change or improvement?

I haven't really seen much change in how the courts work during my relatively short time litigating in the civil and criminal courts, but looking at things from a more macro policy level, I believe there's been a kind inverse-effect phenomenon. As our society, driven in part by advances in technology, becomes increasingly complex, dynamic and fast-paced, we are seeing that trials and pre-trial procedures are likewise becoming increasingly complex, but are collectively having the effect of slowing the system down. With longer times to trial, longer trials and increased court costs, this presents a clear and continuing challenge to policy-makers and to all of us who participate in the civil and criminal justice systems.

### How has the legal training you received at law school helped you to succeed in this role?

My experience in law school has been invaluable to me. The legal training we received laid the foundation for the solid analytical and advocacy skills that I rely on every day. These skills are essential to my success today in the courtroom as an Assistant Crown Attorney. During my time in the Attorney General's Office those skills also served me well when I grappled with public policy issues, met with stakeholders and was confronted with unexpected issues that inevitably arose on an almost daily basis.

### What is next for you? Where do you see yourself in 10 years?

When I graduated 10 years ago I could not have predicted the career path that I was to follow, so it seems almost foolish for me to attempt to forecast the next 10 years. I do know that my present role as an Assistant Crown Attorney is 100 percent rewarding. I feel privileged to be able to serve in this role and hope to continue in it. Working hard, taking on challenges, and making a difference; that is what motivates me.

### Do you have any advice for students and recent graduates?

Don't be afraid of change or taking a chance on a job. Nothing is set in stone. No one should feel stuck in a job because we all can change our jobs. We U of T Law grads are privileged to have a law degree from the best law school in Canada. That means we have options, both in and out of the traditional legal practice of law. We are well equipped to ride the crest of change in our society and to make a difference! ■







# Public Inquiries And Commissions

Examining the past, addressing wrongdoing, restoring justice. U of T Faculty of Law professors provide an in-depth examination of this uniquely Canadian way of addressing some of the most pressing public policy issues and past injustices of our time. The following articles highlight our faculty's enormous contributions to the functioning of the public inquiry system in Canada. (CP PHOTO/Kevin Frayer)

# Getting at the Truth:

## How Public Inquiries Can Improve the Criminal Trial Process



BY PROF. MICHAEL CODE

**THE MOST STRIKING REVELATION** for me during my time as Commission Counsel on the Driskell Inquiry<sup>1</sup> was discovering the power and efficiency of its fact-finding tools. In an era where adversarial trials have often become dysfunctional, especially in cases where the factual inquiry is lengthy and complex<sup>2</sup>, what struck me most was how effective inquisitorial procedures can be in getting at the truth.

Indeed, recent attempts have been made to import the procedural mechanisms that are now typical in public inquiries into the modern adversarial trial process. Some commentators have argued against this development on both procedural and constitutional grounds. In my opinion, there are no serious practical, doctrinal or constitutional impediments to law reform of this kind. Rather, it should be encouraged as a means of improving the fact-finding and truth-seeking function of the criminal trial process.

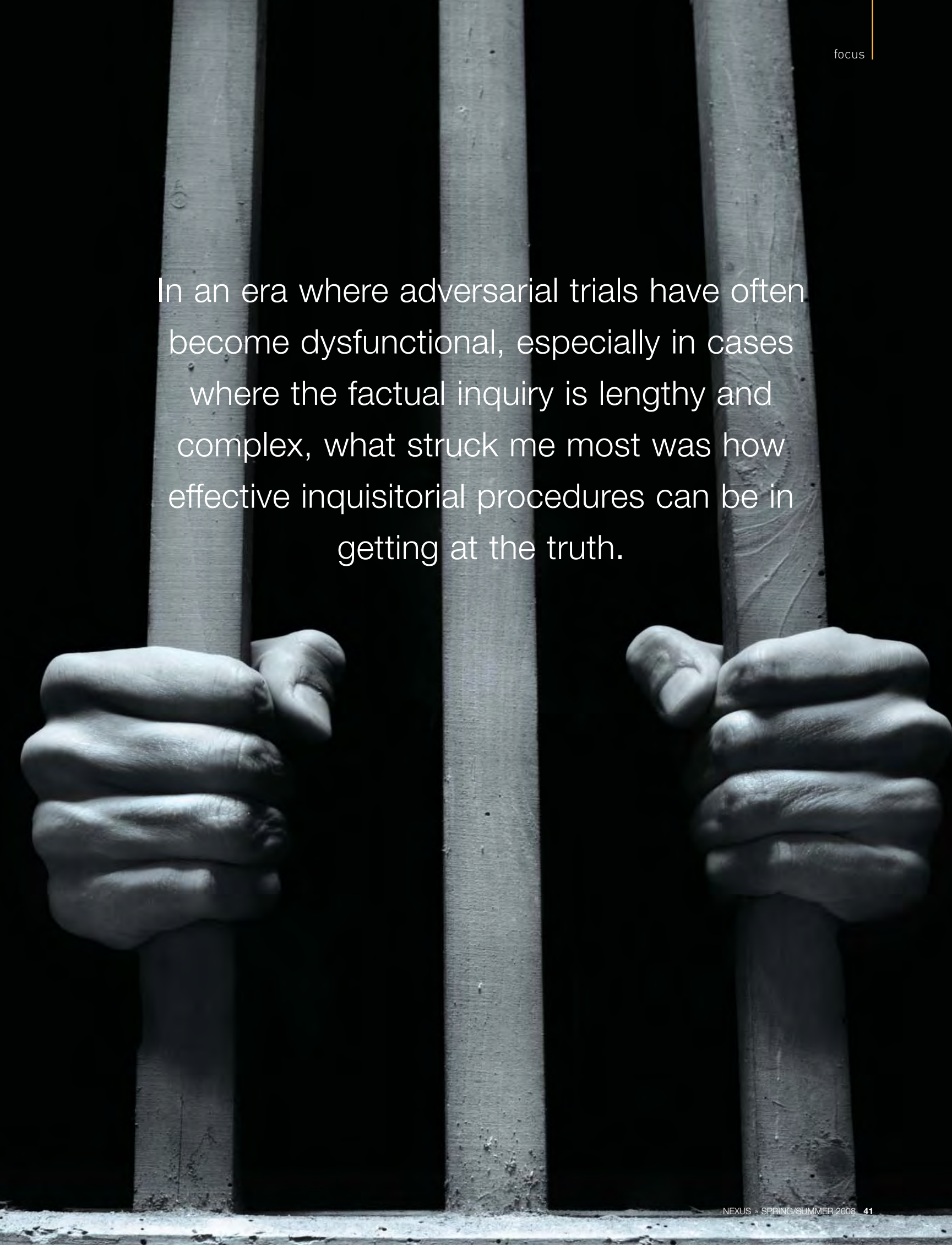
### THE INQUISITORIAL TOOLS AVAILABLE TO FACT-FINDING PUBLIC INQUIRIES

Public inquiries can have retrospective fact-finding mandates, or prospective policy-making mandates, or both. The terms of reference of the Driskell Inquiry included the following two fact-finding mandates:

- “To inquire into the conduct of Crown Counsel who conducted and managed the trial of James Driskell ... and consider whether that conduct fell below the professional and ethical standards expected of lawyers ...”;
- “To inquire into whether the Winnipeg Police Service failed to disclose material information to the Crown ... and, if so, consider whether the non-disclosure contributed to a likely miscarriage of justice ...”

These two factual inquiries raised the same kinds of issues that arise in ordinary trial proceedings. They required the reconstruction of a complex historical event and then the application of a legal value judgment to that factual event, just like a criminal or civil trial.

The central historical event at issue in the Driskell Inquiry was whether the Winnipeg Police had entered into a secret arrangement in 1990-91 with the key Crown witness in a murder case, one Ray Zanidean, whereby he would effectively receive immunity for a very serious crime that he had previously committed, and whether this immunity was the *quid pro quo* for his testimony against the accused murderer, one James Driskell. The other main fact or event at issue was whether various Crown counsel were aware of the



In an era where adversarial trials have often become dysfunctional, especially in cases where the factual inquiry is lengthy and complex, what struck me most was how effective inquisitorial procedures can be in getting at the truth.



James Driskell (left), with his lawyers James Lockyer (centre) and Alan Libman, answers a question at a press conference in Winnipeg, Thursday, Feb. 15, 2007. Police and prosecutors failed to provide all the evidence at the original murder trial of Driskell, says an inquiry report into the Manitoba man's wrongful conviction in the death of his friend. (CP PHOTO/John Woods)

arrangement, as well as other financial benefits that Zanidean was to receive after he testified. There was no serious question that an immunity arrangement, and any financial benefits, were never disclosed to defence counsel, the trial Judge or the jury that eventually convicted Driskell. Nor was there any question that this information was highly relevant to Zanidean's credibility.

The Inquiry began its work in early 2006, some 15 years after the relevant events. Had this been part of the criminal adversarial process, the normal tools available to investigate such an event would be for the police and/or Crown counsel to question witnesses and seize documents and any other real evidence, by way of search warrants if necessary. If the witnesses were unwilling to volunteer relevant information, or if there were insufficient grounds to obtain search warrants, the inquiry into the Driskell facts would have been slow and difficult.

By contrast, the Rules of the Inquiry included the following procedural devices which are now typical in modern public inquiries:

- All parties and all witnesses were obliged to produce any relevant documents within their possession or control;
- All persons believed to have relevant information were obliged to attend an interview, with or without counsel, and answer all relevant questions asked by Commission Counsel;
- The above two powers were enforceable by summons or subpoena in the event that a witness or party refused to voluntarily comply.

These three procedural rules give Commission Counsel broad powers of pre-hearing production and discovery. They are powerful investigative tools that allow Commission Counsel to learn the case in advance, develop a coherent theory as to the relevant facts and then call the evidence at a public hearing in a focused and efficient manner.

As it happened, the evidence at the Driskell Inquiry was completed in approximately 20 days, during July and August 2006, and the Commissioner, former Chief Justice Patrick LeSage, had little difficulty making strong findings of misconduct against both the Crown and the police.

## THE RECENT ADOPTION OF SIMILAR INQUISITORIAL TOOLS IN ADVERSARIAL PROCEEDINGS

The use of investigative subpoenas, or pre-hearing compulsion, is a common practise in certain kinds of regulatory proceedings (for example, s. 13 of the *Ontario Securities Act* enacts such a power in securities enforcement cases.)<sup>3</sup> This kind of inquisitorial procedure raises concerns about self-incrimination, in particular, whether a suspect could be compelled to incriminate himself/herself through investigative compulsion and could then be charged.

After some early uncertainty in the case law, the Supreme Court of Canada upheld the constitutional validity of pre-hearing compulsion, both in the context of regulatory tribunals like Securities Commissions and in the context of public inquiries. Although this pre-trial subpoena power implicates s. 7 "liberty", the case law has held that it is generally not contrary to "the principles of fundamental justice", provided the witness receives "use immunity" and "derivative use immunity" in order to protect against self-incriminatory uses of the compelled testimony in any subsequent proceedings. The cases have also held that in exceptional circumstances, where state authorities attempt to use investigative subpoenas to compel suspects, as opposed to mere witnesses, the compulsion may have impermissible self-incriminatory purposes which do violate s. 7 of the *Charter*.<sup>4</sup>

In the course of developing this compromise Canadian approach to self-incrimination in its s. 7 *Charter* jurisprudence, certain *dicta* emerged in judgments of some members of the Court, expressing concern about extending these powers of pre-hearing compulsion to police officers conducting ordinary criminal investigations. For example, in *Thomson Newspapers*, Justice Sopinka argued against "arming the police with subpoena powers" and in *S. (R.J.)*, Chief Justice Lamer and Justice Iacobucci expressed similar concerns.<sup>5</sup> Accordingly, there was ongoing uncertainty as to whether investigative subpoenas in criminal cases would somehow violate s. 7 self-incrimination principles, the obvious concern being that the police would abuse these powers in order to compel suspects and not mere witnesses.

Parliament confronted this issue in its post 9/11 legislation, the *Anti-Terrorism Act*, by enacting "investigative hearings"

under s. 83.28 of the *Criminal Code* in certain crimes of terrorism.<sup>6</sup> This new statutory provision allowed the police to subpoena a witness to a judicially supervised hearing, whether charges are laid or not, for the overtly investigative purpose of simply “gathering ... information concerning the offence.” The provision expressly granted the witness both “use immunity” and “derivative use immunity” and granted the judge discretion to entirely refuse to issue the subpoena. These latter provisions were an attempt to bring the legislation within the Court’s prior s. 7 *Charter* jurisprudence.

Parliament’s efforts were successful as the Supreme Court of Canada upheld the constitutionality of the legislation in the only case where it was used, prior to its expiry in December, 2006 due to the built-in five year “sunset clause” that Parliament had included in the legislation. In *R. v. Bagri*, the so-called “Air India” case, the Crown and police attempted to compel one Satnam Kaur Reyat to testify at an “investigative hearing” pursuant to s. 83.28. She was the wife of one of the accused who had previously pleaded guilty and been sentenced. It was believed that she had relevant and non-privileged information about the airline bombing conspiracy but she had refused to cooperate with the police investigation. Her counsel brought a constitutional attack against the investigative subpoena on grounds that it violated a broadly framed s. 7 right to silence, as well as self-incrimination principles. The issue reached the Supreme Court of Canada on a rare interlocutory appeal. By a strong majority, the Court upheld investigative compulsion, even in the context of a criminal case, provided the usual self-incrimination protections were extended to the witness in accordance with the Court’s earlier jurisprudence.<sup>7</sup>

As a result of this test case, there has been pressure to expand the use of investigative subpoenas to include ordinary criminal cases. For example, the IMETS unit of the RCMP, which investigates capital market frauds, has lobbied for these powers due to the difficulties it encounters when investigating high-level white collar crime. In these cases, where most of the witnesses are officers, directors, auditors or financial advisors to public companies, the witnesses will often retain lawyers and they may refuse to cooperate with the police investigation due to fear of civil liability. Unless the police have subpoena powers, the witnesses cannot be forced to cooperate and unless the witnesses are compelled by subpoena they cannot invoke s. 7 and s. 13 *Charter* protections against self-incrimination. In other words, investigative compulsion would help the police and it would also protect the witness.

Some commentators have argued that it would be “inappropriate” to grant these inquisitorial powers to the police, that it would be akin to the introduction of American-style grand juries which were abolished in Canada many years ago and that it would raise serious constitutional issues.<sup>8</sup>

In my opinion, these concerns are misconceived. Indeed, there is no compelling constitutional argument against pre-trial or investigative compulsion of mere witnesses. The “right to silence”, as a s. 7 principle of fundamental justice, is enjoyed by suspects and by the accused at both the pre-trial and trial stages of the adversarial process.<sup>9</sup> Witnesses, on the other hand, have always been compellable provided their self-incrimination rights are protected by “use immunity” and “derivative use immunity”, pursuant to the *Evidence Acts* in the pre-*Charter* era and now pursuant to ss. 7 and 13 of the *Charter*.

From the perspective of public policy, there can be no suggestion that the use of investigative subpoenas somehow revives the grand jury. The many historic functions of the grand jury included inspecting public institutions, insuring all prisoners awaiting trial were brought to court in a timely way, and presenting indictments after reviewing the sufficiency of the Crown’s evidence. It was a cumbersome, expensive and duplicative body, in terms of these functions, and so it was gradually abolished in this country and in the U.K. Its one useful function, which the investigative subpoena also provides, was to compel and discover uncooperative witnesses. As noted in the *McRuer Report*, “grand juries are still employed and play important roles in the investigation of crime” in the United States.

When s. 83.28 lapsed in late 2006, due to the five year “sunset clause”, all major police forces in Canada argued for its preservation and the federal Government attempted, unsuccessfully, to extend the power. The Government has indicated that it will re-introduce *Criminal Code* amendments that provide for “investigative hearings” in terrorism cases. There are many practical reasons for extending this power to other major crimes, such as gang-related homicides and major securities frauds, where witnesses either refuse to cooperate with the police or require compulsion from a subpoena in order to engage *Charter* self-incrimination protections.

Canada has had a long and successful history of using public inquiries as powerful inquisitorial fact-finders. There is good reason to take this positive experience and apply it to the criminal process in those cases where investigative compulsion is essential to the discovery of the truth. ■

<sup>1</sup> Report of the Commission of Inquiry into Certain Aspects of the Trial and Conviction of James Driskell, the Honourable Patrick J. LeSage Q.C., Commissioner; Government of Manitoba 2007.

<sup>2</sup> See, for example: the Honourable Justice Michael Moldaver, “Long Criminal Trials: Masters of a System They are Meant to Serve” (2006) 32 C.R. (6th) 316.

<sup>3</sup> R.S.O. 1990, ch. S-5, as amended.

<sup>4</sup> *B.C. Securities Commission v. Branch*, [1995] 2 S.C.R. 3; *Phillips v. Nova Scotia (Westray Inquiry)*, [1995] 2 S.C.R. 97.

<sup>5</sup> *Thomson Newspapers Ltd. v. Canada (Director of Investigations and Research, R.T.P.C.)*, [1990] 1 S.C.R. 425 at p. 606; *R. v. S. (R.J.)*, [1995] 1 S.C.R. 451 at pp. 472, 536 and 541.

<sup>6</sup> 49-50 Elizabeth II, 2001.

<sup>7</sup> *R. v. Bagri*, [2004] 2 S.C.R. 248.

<sup>8</sup> The Honourable Peter Cory and Marilyn L. Pilkington, “Critical Issues in Enforcement,” September, 2006, the Task Force to Modernize Securities Legislation in Canada at pp. 219-220.

<sup>9</sup> *R. v. Hebert*, [1990] 2 S.C.R. 151 at pp. 180-2; *R. v. Broyles*, [1991] 3 S.C.R. 595 at pp. 605-8; *R. v. Esposito* (1985), 24 C.C.C. (3d) 88 at p. 94 (Ont. C.A.); *R. v. Wooley* (1988), 40 C.C.C. (3d) 531 at 539 (Ont. C.A.).

<sup>10</sup> *Royal Commission Inquiry into Civil Rights*, Honourable J.C. McRuer, Commissioner, Vol. 2, Chapter 50, pp. 770-782.

*Directing  
Research  
For Public  
Inquiries*



BY PROF. KENT ROACH

PUBLIC INQUIRIES ARE A UNIQUE INSTRUMENT for the development of public policy. They are often appointed to investigate a tragedy or disaster and to make policy recommendations that will hopefully prevent the reoccurrence of such horrible events in the future. In making recommendations, Commissioners are often thrust into new and complex worlds. They must be quick learners.

Fortunately, Commissioners are assisted by talented and dedicated teams. Commission counsel are the public face on the inquiry. They interview and call the witnesses and ask the tough questions. Junior commission counsel often play the critical role of digging through what can be a momentous documentary record.

Researchers also play an important role. There is a long history in Canada of public inquiries commissioning independent academic work. Such studies are often published with the commission's report where some would say they sat on the shelf and gathered the proverbial dust.



Discredited pathologist Dr. Charles Smith arrives for the beginning of his testimony at the Goudge Inquiry into pediatric forensic pathology in Toronto on Monday, Jan. 28, 2008. (CP PHOTO/Frank Gunn)

Today, however, many inquiries are making conscious decisions to bring research into the day to day life of the inquiry. Commissioners frequently appoint research advisory or expert panels to provide advice. All public inquiries have extensive web sites. Papers by researchers can be posted on the web within hours of completion. In a globalized world that relies on e-mail, a commission can, if necessary, engage a researcher on the other side of the world. Researchers are also being asked to testify in the hearings either by themselves or as part of a panel.

In my view, the increased prominence of research in public inquiries is a healthy development. It not only gets the researcher out of the back room, but it allows the parties, the public and the commissioner to question the research. It provides real time peer review that, at the end of the day, should put the commissioner in a better position to make intelligent and workable recommendations.

Public inquiries in Canada have a history of commissioning academics to produce independent research to assist the commission in the work. As a student, I recall reading the important studies that U of T law Professors John Edwards and Marty Friedland produced for the McDonald Commission which investigated wrongdoing by the RCMP's security service and recommended the creation of what is now the Canadian Security Intelligence Service, Canada's civilian security intelligence agency. The summer before I started law school I worked in Ottawa as a research assistant for Alan Cairns who was the research director for the Macdonald Commission that recommended free trade. In a perhaps typically Canadian way, my professional life has continued to intersect with public inquiries.

The role of director of research within a public inquiry is a challenging and exciting one. The director of research must find and commission independent researchers and experts who can produce readable expert reports on time. The research director should also serve as a link between the researcher and commission counsel and the Commissioner.

I have recently been fortunate to serve in such a capacity for two ongoing inquiries, the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, headed by retired Supreme Court Justice John Major ('57) and the Commission of Inquiry into Pediatric Forensic Pathology chaired by Ontario Court of Appeal Justice Stephen Goudge ('68).



Research directors, like the public inquiries they work for, have to move quickly. The Goudge Inquiry was appointed in late April, 2007 and by early May, 2007 I had been appointed by Justice Goudge. With the assistance of commission counsel and my summer research assistant, Andrew Martin ('10), I immersed myself in what was for me the new and foreign world of forensic pathology.

Our first order of business was to identify a number of experts that could teach us about forensic pathology. Dr. Stephen Cordner, the head of the Victorian Institute of Forensic Medicine in Melbourne, was identified as one of the world's leading forensic pathologists. By happenstance, I was scheduled to travel to Australia to speak at a conference on terrorism in early July. Once that conference was done, I was on a plane to Melbourne and found myself in Dr. Cordner's office in the Melbourne city morgue. The upshot of all of this was that I was able to convince Dr. Cordner, Dr. David Ranson a forensic pathologist who is also a lawyer, and their colleagues to produce two academic studies, books really, on controversies in pediatric forensic pathology and a model forensic pathology service. These studies, along with nine other research studies,

The Air India mandate is daunting in its breadth. It requires a large set of skills that can only be assembled through a team. I was fortunate to be able to convince my U of T colleagues Professors Anita Anand and David Duff to contribute to the process by writing papers on the adequacy of laws against terrorism financing and charities that may support terrorism respectively. As in the Goudge Inquiry, we also looked beyond Canada for best practices and commissioned parallel papers on the international experience in these areas. A variety of non-lawyer experts in intelligence, witness protection, aviation security and terrorism were also commissioned to provide research papers and an extensive set of research papers will be published with Justice Major's final report.

Writing a research paper for a public inquiry can be challenging. The deadlines are almost always much tighter than for normal academic work. The researcher may also be supplied with public documents from the inquiry process. In Air India, we were careful to ensure that researchers did not have access to secret information so that their papers could be published without having to be screened for secret information. The researcher may also end up being cross-examined about

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*Public inquiries are intellectually fascinating, but it can never be forgotten that they often arise from unspeakable suffering.*

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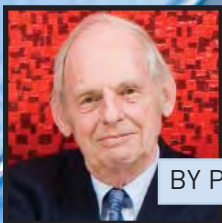
are now available at [www.goudgeinquiry.ca](http://www.goudgeinquiry.ca). They have been presented in a series of hearings and roundtables at the Goudge inquiry. The experience for me has been deeply intellectually enriching, and hopefully the research will be of assistance to the parties and to Commissioner Goudge.

Public inquiries are intellectually fascinating, but it can never be forgotten that they often arise from unspeakable suffering. Over the last two years, I have been the Director of Research (Legal Studies) for Justice Major's inquiry into the 1985 Air India bombing that resulted in 331 deaths in what was before 9/11 the world's most deadly act of aviation terrorism. The inquiry has a mandate to investigate not only what went horribly wrong in 1985, but also to make recommendations about current security measures in areas ranging from aviation safety to terrorism financing and to the relation between intelligence and evidence in counter-terrorism investigations and prosecutions.

the paper. This can be daunting for some researchers, though I tell them that in my experience the questions received are often not tougher than those asked by our colleagues at conferences and by our students. Nevertheless, it is gratifying to be able to present your research in such a public setting as a public inquiry.

The pay-off for writing a research paper for a commission is that the paper may influence the commissioner's policy recommendations. Or maybe not. Commissioners are free to modify or completely reject the recommendations made by their researchers and their research directors. This is the way it should be. The Commissioner has been appointed to make the recommendations, not the researchers. Research is only part, but I would submit, an important part of the inquiry process. ■

# Do Public Inquiries Work?



BY PROF. MICHAEL TREBILCOCK

**SINCE CONFEDERATION,** there have been hundreds of formal public inquiries constituted under Canadian federal and provincial laws. Commissions of inquiry have investigated a vast range of issues from the purely advisory functions on complex issues of public policy, to allegations of wrongdoing (typically by public officials).

By far the most common type of public inquiries, however, are those that fall into a middle ground, and are precipitated by a public scandal or tragedy. In these cases, the commission of inquiry has a dual mandate: first, to engage in retrospective or backward-looking fact or fault-finding, and second, to engage in prospective or forward-looking policy advice on institutional redesign to mitigate the risk of a re-occurrence of the scandal or tragedy.

With respect to these middle-ground inquiries, several broad hypotheses are typically postulated to explain the inadequate performance of the systems (and resulting tragedy) in question. First, it may have been the result of good people trapped

in a dysfunctional system. Second, poor performance might have been the result of bad people derailing or sabotaging a good system. Third, poor performance may have been attributable to a combination of bad people functioning in a bad system. A purely systemic focus is likely to concentrate on Hypothesis 1. A purely fact or fault-finding focus is likely to focus on bad people in Hypotheses 2 and 3 (largely abstracting from institutional context). Of course, middle-ground inquiries, in principle, should pursue all three hypotheses. The Canadian experience suggests that too much focus has been placed on fault-finding, resulting in a largely adjudicative/adversarial approach, lengthy time periods, large amounts of money spent, and poor results.

The Krever Commission of Inquiry into the Blood System in Canada (1993-1997), following the tragedy of HIV-tainted blood infecting between 1,200 to 1,400 Canadians, largely allowed the inquiry to become preoccupied with formal adjudication in a highly adversarial process akin to a trial. The Inquiry spent 17.5 million dollars (57 million dollars in public

expenditures in total), against an initial budget of 2.5 million dollars, directly conducted 247 days of hearings (excluding appellate proceedings), involving 53 lawyers, 474 witnesses, 175,000 documents and took over four years to complete (as against an initial one-year planned time-line).

Late in this process, federal and provincial Ministers of Health initiated their own extensive research and consultation process over an 8-month period, from January to August 1996, resulting in an extensive report and recommendations for redesign of the Canadian blood system, which were largely implemented. The denouement of the Krever Commission is that criminal prosecutions of individuals for wrongdoing have only recently (2007) been concluded, resulting in acquittals or abandonment of charges.

In contrast to the Krever Commission, the U.S. Secretary of the Department of Health and Human Services in April 1993 requested the Institute of Medicine to review the organization and regulation of the U.S. blood system. A fourteen person committee was officially appointed in April 1994. It held two days of public hearings which involved no lawyers, heard from 72 witnesses, reviewed over 700 documents and spanned 17 months from its inception to the publication of its report as a book. Its total budget was \$685,000. The report led to Congressional hearings and various legislative and regulatory reforms.

Here are two (or three) starkly different models of public investigation of tragedies in an almost identical context. Professor Austin and I document similarly stark contrasts in the review of potentially anti-competitive mergers in Canada and the E.U.

### WHAT LESSONS DOES ONE DRAW FROM THE ABOVE EXPERIENCES?

First, in middle-ground public Commissions of Inquiry constituted with full legal powers of investigation, there will be enormous pressures tending in the direction of a formal adjudicative/adversarial process focussed on retrospective fault-finding. In part, I believe that this is a feature of the legal culture with which we are all imbued from our early legal training. Most legal disputes are classically conceived of as bipolar disputes or claims between A and B (whether in criminal law, tort law, contract law or many other areas of law).

Second, following a public scandal or tragedy, there will be enormous pressure from the media, opposition political parties and the public at large to find out “whodunit” – who did what to whom and why. This is a natural tendency in all of us towards what former Dean Guido Calabresi of Yale Law School has called, “scapegoating.” Conversely, there will be much less public interest in the nuances and complexities of institutional redesign options that are rarely susceptible of easy capture in newspaper headlines or 30-second sound-bites.

Third, the skill sets that render lawyers appropriate appointees as Commissioners and Commission counsel or as counsel to parties before a Commission in pursuing formal adjudicative/adversarial fault-finding inquiries are not necessarily the most appropriate skill sets for researching and analyzing institutional redesign options in given policy contexts, and hence this function is likely to be discounted (or executed less well).

My comments at this juncture may be interpreted as arguing that formal adjudicative/adversarial processes in bipolar disputes ought to continue to have a major role to play in the legal system, but have a much more limited role in what Lon Fuller famously called “polycentric” disputes. But my misgivings about the formal adjudicative/adversarial model are much graver than this.

In both the civil and criminal justice systems, formal trials are a vanishing phenomenon. In the civil justice system, commercial disputes have largely abandoned the formal court system for private arbitration. The reasons are not hard to find. To take an admittedly extreme case, in Brampton today (sometimes referred to by lawyers as the “black hole” of the Ontario justice system), court officials will not even set civil cases down for trial but instead estimate waiting periods of about 8 years as court dockets become increasingly congested with criminal law and family law proceedings. But even family law matters are rapidly fleeing the court system in response to costs and delays in favour of private arbitration or mediation. Most merger cases are resolved by private negotiation in the Commissioner of Competition’s office so as to avoid the costs and delays of months or years of formal proceedings before the Competition Tribunal. The administration of civil justice is being privatized by default.

In the criminal justice system, most more routine cases are resolved by plea bargains, but typically only after 8 or 10 fruitless appearances and adjournments. On the other hand, mega criminal trials typically consume many months, often years, of court time and sometimes simply collapse under their own weight (as in the recent dismissal of corruption charges against 6 Toronto police officers).

Most informed observers (such as my colleague Michael Code and Justice Michael Moldaver of the Ontario Criminal Court) believe that only aggressive pre-trial case management by courts can save mega trials from themselves. A parallel process of aggressive case-management was employed in exemplary fashion by Justice Dennis O’Connor in the fact-finding dimension of the Walkerton Inquiry (a model of a well-conducted public inquiry). I have advocated a similar approach to merger review. In all of these contexts, a common thread is that we are moving towards a more inquisitorial process of adjudication and away from a largely unconstrained adversarial process.

One immediate implication of this process of evolution is that the two aspects of many public inquiries – fault-finding and institutional re-design may not (or need not) entail such sharply different processes in the future as in the past (although this may require an expansion of the skill sets of many litigation lawyers involved in such inquiries).

More generally, we need to ask some searching questions about the future of trials even in their traditional domains. As Gordon Tulloch presciently argued in his controversial book, *Trials on Trial* (published in 1980), the virtues of the classic adversarial process of formal adjudication need to be demonstrated and not simply assumed or asserted. At the limit, the Full Court Press model of formal adjudication may spell its own demise. In the words of the anti-Vietnam war protest poster: “Suppose they gave a war. And nobody came.” ■

# The Paradox of Politics and Public Inquiries



BY PROF. LORNE SOSSIN

Public Inquiries  
have become  
the gold standard  
of independent  
accountability in  
Canada's legal and  
political system.

**A**t first blush, this is something of a paradox. Public inquiries, after all, only come into existence when a government decides to call one, and further sets the terms of reference, appoints the Commissioner(s), and sets the budget and timeline. Ultimately, the government represents the only institution which can implement any of the inquiry's recommendations. And, for good measure, as we saw in the Somalia Inquiry in the 1990s, a government can also shut down an inquiry at any time, and for almost any reason that it likes. Yet, despite the near total control by government over the creation and implementation of inquiries, they are widely seen as beyond political influence, and as the Gomery Inquiry so vividly demonstrated, an inquiry may unearth truths capable of bringing down the very government which called it.

That said, an inquiry can accomplish little without the cooperation of government. In the case of the Arar Commission, for example, we witnessed the strange spectacle of parallel inquiries, one held in the public eye and a broader inquiry held in secret to accommodate government concerns that national security would be compromised if certain documents and testimony were heard in public. Neither the United States nor Syria provided assistance to the Inquiry, which left its findings necessarily less complete. Complete or not, inquiries enjoy remarkable public confidence. When the Arar Inquiry's Report confirmed Maher Arar's claim of being deported from the U.S. to face torture in Syria, cleared him of the allegation that he had terrorist links, the federal government responded, reaching a settlement with Arar. Ultimately, the RCMP Commissioner also resigned over the Arar Inquiry's Report.

One reason for the public confidence in public inquiries is that, once established, they are conducted in an independent fashion. They are run by a Commissioner or Commissioners (these days, more often than not, a sitting or retired judge) who con-

control key aspects of the inquiry, ranging from which parties will have standing and funding to what information and testimony can be compelled pursuant to the authority provided under the federal *Inquiries Act* or its provincial counterparts. Commissioners are usually given terms of reference which provide the inquiry with a mandate to make findings of fact and policy recommendations. The inquiry's strength is this political mandate. It is what distinguishes inquiries from criminal and civil legal proceedings.

Rather than rely on the adversarial process to establish facts and liability, the inquiry reaches conclusions through an inquisitorial process, controlled by the Commissioner and Commission Counsel. While criminal and civil proceedings may be appropriate where there is a guilty or negligent party, inquiries are appropriate where it is the system itself that is at the root of a serious problem. Inquiries are called, in other words, when the concern is not a collection of bad apples, but rather a seriously flawed barrel.

This theme was dominant in the Ipperwash Inquiry in Ontario. Criminal proceedings had resulted in a conviction of the OPP Officer who had caused Dudley George's death at a protest at Ipperwash Provincial Park in 1995. Civil proceedings were launched to provide compensation for the George family, and separate land claim proceedings would address the long-term future of the aboriginal community which had launched the protests in the first place. Yet the family believed that only a public inquiry, with its powers to compel testimony and sift through mountains of documents, could get to the truth and ensure a similar tragedy could be avoided in the future. The Inquiry, when it was ultimately called in 2003, took four years to complete and resulted in wide ranging recommendations on the relationship between aboriginal communities, law enforcement and the government.

*Inquiries are called, in other words, when the concern is not a collection of bad apples, but rather a seriously flawed barrel."*

While an inquiry has effective tools for truth-finding and for dealing with systemic issues, it still depends on cooperation from the individuals and governments involved. This is another aspect that distinguishes the inquiry from other legal proceedings. While a judge has the power to sentence a criminal or impose damages on a party, a commission of inquiry has no remedial power.

While inquiries are often aimed at ensuring that tragedies of the kind they are created to examine will not occur again, they can make recommendations designed with this goal in mind, but have no resources or authority to implement those recommendations. Consider what happened to the Gomery Inquiry. Some of Gomery's many recommendations were implemented immediately, such as subjecting political staffers to increased oversight. Other recommendations, however,



Justice John Gomery listens to Pierre Leduc, lawyer for Gilles-André Gosselin, former president of Gosselin Communications Stratégiques, during the Gomery Commission Monday, June 13, 2005 in Montreal. (CP PHOTO/Paul Chiasson)

were expressly rejected, such as changing how Deputy Ministers and the Clerk of the Privy Council were appointed so that they would no longer serve "at the pleasure" of the Prime Minister. Gomery had linked these recommendations to changing the culture in Ottawa. In a letter released in December of 2006, the Prime Minister indicated that the *Federal Accountability Act* addressed many of the recommendations in the Gomery Inquiry Report and that they were not inclined to alter the appointment procedures for Deputy Ministers or the Clerk of the Privy Council. The Prime Minister disagreed with the proposition set out in my paper and adopted in the Gomery Report that the public service must exercise a measure of independence from the government of the day if it is to safeguard effectively the rule of law and the political neutrality of the public service.

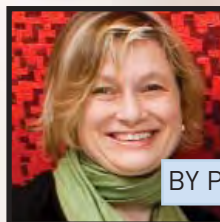
Gomery, of course, was in no position to respond to the Prime Minister, having returned to close out his judicial career. Indeed, his only ongoing connection to the Inquiry that bears his name is his involvement in the defence of the bias claim against him lodged by former Prime Minister Jean Chretien.

Only rarely do inquiries continue past their governmental life span. The 9/11 Commission in the US, for example, funded itself to continue as a watchdog group to ensure that its recommendations were implemented. Occasionally, inquiries themselves recommend reviews after a period of time (2 years, 5 years) which would obligate the government to report on the extent to which recommendations have been implemented. The reality, however, is that inquiries enjoy such strong legitimacy in part because they are transient bodies which must rely on public support and attention for the power they wield. Governments follow inquiry recommendations because to ignore them would be perilous. Yet, public interest can also be transient. While the focus on Gomery at the time of the 2005 election likely made it the highest profile inquiry in Canadian history, by the time the Government rejected the recommendations in early 2007, it registered as merely a blip on the news cycle.

It is clear both that inquiries can be independent and effective notwithstanding that they are entirely creatures of the political process, and that, in the final analysis, the potential of inquiries to find truth and improve problems depends on political will. Politics remains the paradox of public inquiries just as public inquiries remain the paradox of politics in Canada. ■



# Commissions in Health Care: Running Vigorously on the Spot?



BY PROF. COLLEEN M. FLOOD

## HEALTH CARE IN CANADA

is at a cross-roads, and sustainability, quality, and accessibility are front and centre questions. With respect to sustainability, all Canadian provincial governments are concerned by the growing share of public budget absorbed by health care (in Ontario, 45% of government spending is devoted to health care). But while citizens have little appetite for tax increases, they still expect the health care system to deliver with regard to timeliness, quality, and accessibility. In particular the public is very concerned about wait times, and the recent Chaoulli decision has reopened the debate about whether or not individuals should be able to buy private insurance to finance more timely treatment in the private sector. There are also concerns over the breadth of services covered as the “system” presently results in access gaps to prescription drugs, home care and long-term care.

A consolation to Canadians is that most other jurisdictions struggle with the same questions of sustainability, quality, and accessibility. There is no quick-fix or magic cure. But despite recognition of limited resources, Canadians find questions about the trade-offs that have to be made in health care difficult, and governmental responses to concerns about health care have often been to create a commission to make recommendations.

Indeed, over the course of the last ten years there have been no less than fourteen commissions that have ventured into the health care policy debate. These include the Clair Commission in Quebec; Fyke Commission in Saskatchewan; Mazinkowski Commission in Alberta; Kirby Committee; Romanow Commission; and more recently the Castonguay Commission in Quebec. The popularity of this mechanism is suggestive of the intractable trade-offs that governments need to make but would prefer not to. If Canadians want quicker, faster and more timely treatment, but the public system is unable to deliver, there are only three options: the system sufficiently improves within existing resources using better management techniques; more resources are invested into the system; or we allow those with private means to buy faster and better care and accept a lower standard of care in the public health care system.

Governments have a number of different options that they can make use of when deciding on the type of commission to use. At the federal level, royal commissions can be created

under Part 1 of the Inquiries Act and these can take the form of policy commissions (for example the Romanow Commission) or investigative commissions of inquiry (for example the Krever Inquiry into tainted blood). The policy commissions are mandated to research and develop policy options (which often includes public consultation), while inquiries are created to conduct a judicial investigation into a particular incident or governmental conduct. The provincial legislatures can also create bodies to provide policy recommendations and conduct investigations. For example, the Ontario legislature in March 1996, through Regulation 88/96 made under the Ministry of Health Act, created the Health Services Restructuring Commission (Sinclair Commission). More recently, the government of Quebec (as noted in the Budget Speech of May 2007) created the Task Force on Health Funding (Castonguay Commission) to propose new approaches to ensure adequate funding of Quebec’s health system.

The two most well-known and comprehensive reports on Canadian health care in the last 10 years were both delivered in 2002 by the Standing Senate Committee on Social Affairs, Science and Technology (chaired by Senator Michael Kirby) and by the former premier of Saskatchewan, Roy Romanow. I was involved with both the Romanow Commission and the Standing Senate Committee, providing testimony to both and writing expert research papers for both.

The Romanow Commission, mandated on April 3, 2001 by Order in Council, released its final report on November 28, 2002. The Commission had an operating budget of 15 million dollars and 35 staff members. It engaged in unprecedented public consultation with Canadians about the future of Medicare. It partnered with the Canadian Policy Research Networks (a not-for-profit policy think-tank), to organize 12 regional consultation sessions across the country which included the participation of 480 Canadians. It held 21 open public hearings in 18 different cities and 9 expert workshops with provincial officials and other experts. The Commission and its staff made 24 site visits in 14 different towns and cities, including separate site visits in the U.K., Sweden and France. There were six expert roundtables, including three in Canada and three overseas in London, U.K. (experience of OECD countries with Public-Private Partnerships), Paris, France (experience of OECD countries with various forms of user-pay) and Washington, D.C. (cost-drivers and innovation

in health care). The Commission also held 12 on-campus policy dialogues on specific health issues organized in partnership with Canadian universities. It commissioned 40 discussion papers prepared by independent authors/institutions, three major independent Research Consortium reports (on Globalization & Health; Health Human Resources; and Fiscal Federalism) and nine issue/survey papers about the top issues in health care.

Together with Professor Sujit Choudhry, I prepared an expert paper on the Canada Health Act. Our recommendation for a new sixth criterion of accountability featured prominently in the final report. I also appeared on television in a show organized by the Commission to discuss the future of the Act and was on Parliament Hill in a media scrum when the report was released.

*The easiest solution is often more money, particularly when real reform would challenge the comfort zone of many stakeholders in the system including physicians, nurses, hospitals, and patients.*

In December 1999, the Senate requested that the Standing Senate Committee on Social Affairs, Science and Technology (Kirby Committee) examine and report on the state of the Canadian health care system and the federal role. The Committee heard from over 400 witnesses and conducted 76 meetings, most of which were public. The Committee issued its final recommendations in October 2002 with an estimated operating cost of just under half a million dollars.

Together with colleagues Mark Stabile and Carolyn Tuohy, I was asked to write four background reports for the Senate Commission. Our research on the dynamics between public and private financing systems across jurisdictions informed the findings and recommendations in the final report.

What was the impact of this whirlwind of activity on the part of the Romanow Commission and the Senate Committee? Most clearly, the result was a subsequent federal-provincial

Accord on Health Care Renewal which provided for an increase in federal transfers to the provinces of 37 million over the next five years. But no meaningful reform was required on the part of the provinces in return for this fiscal infusion. The easiest solution is often more money, particularly when real reform would challenge the comfort zone of many stakeholders in the system including physicians, nurses, hospitals, and patients. Easier then for various levels of government to blame each other for problems within Medicare rather taking on tough reform challenges.

Yet, more money did not sufficiently quell concerns about the health care system, particularly about wait times. Instead, change came from a surprising new direction, the Supreme Court in the Chaoulli decision, which found laws banning the purchase of private health insurance to be contrary to the Quebec Charter of Rights and Freedoms. But the story of the role of commissions does not end here, for the Senate Committee forewarned in its final report that if wait times were not tackled explicitly then there was the likelihood of a constitutional challenge. Such a challenge did eventually emerge in the form of Chaoulli, and Senator Kirby and nine other members of the Standing Committee sought and obtained intervener status (the first example of Senators being involved in a constitutional challenge). They endorsed a concept they called the “Health Care Guarantee” which calls on governments to keep their promises and ensure that the principle of accessibility in the Canada Health Act becomes a reality by providing timely care.

The Chaoulli decision has resulted in significant reform in Quebec and the government has liberalized the law regarding private health insurance for hip, knee, and cataract surgeries and have explicitly provided for contracting out to private for-profit clinics.

Interestingly, the reform that is happening in Quebec in terms of a greater role for privatization is precisely the opposite of what the research evidence and the recommendations of both the Romanow commission and the Kirby committee suggest. Still, even though cause and effect are difficult to untangle, it must be acknowledged that Chaoulli seems to have galvanized governments into tackling wait times within public Medicare, and there is much to cheer in the growing number of success stories emerging from coast to coast. The outstanding question remains whether success will occur at the rate and to the degree required to restore Canadians’ trust in the system and whether public Medicare will be able to keep pace with Canadians’ expectation regarding timeliness, access and quality within existing resources. If the system cannot meet those expectations then it seems likely, and the Chaoulli decision portends, that Canadians will revisit their fundamental commitment to one-tier health care. ■





# Judging the Judges, Judging Ourselves

## The Trial of South Africa's Legal Order



BY PROF. DAVID DYZENHAUS

**IN 1997**, in the midst of my sabbatical in Cape Town, I learned of the “Legal Hearing” which South Africa’s Truth and Reconciliation Commission (TRC) was to hold. This was but one of the hearings into the role of the professions and institutions of apartheid, which were set up by the TRC as part of its broad mandate to establish “as complete a picture as possible of the causes, nature and extent of the gross violations of human rights ... including the antecedents, circumstances, factors and context of such violations”.

Other hearings that were held by the TRC included hearings into the role of the media, the medical profession, business, political parties, and the churches. What made the professional and institutional hearings different was that their purpose was not the main work of the TRC – to establish who was a victim or who would get amnesty. Rather, they were meant to be inquiries into how professions and institutions, which seemed no different than their counterparts in Europe or North America, were deeply implicated in apartheid.

Poor living conditions and confined spaces are evident in this photo of slums in South Africa, more than a decade after the dismantling of Apartheid.



I am a former South African, now a Canadian citizen teaching at the University of Toronto. As a young law lecturer in South Africa in the early 1980s, I participated in the debates about the legitimacy of participation in the apartheid legal order, arguing that it was important for the overthrow of apartheid that lawyers and judges work against apartheid's legal order from within. I had thought that such debates would end with the formal closure of the apartheid era, and my project for a six month sabbatical in South Africa was not meant to touch on such issues. As the Legal Hearing approached, however, I realised that these debates were still very much alive.

I decided to attend the Hearing as an observer since, as neither altogether outsider nor insider, I felt I had no place as a participant. However, a brief conversation with the TRC's legal officer convinced me to submit a written submission. It consisted of an argument in legal philosophy as to why most of the judges of the apartheid era had been in dereliction of the duty they assumed in taking their oath of office.

Few people, especially lawyers, think that philosophy of law matters. Thus I was, to say the least, surprised to find that I would make the first oral submission of the Hearing. This surprise was compounded after I had taken my seat in front of the Commissioners, for their first question to me was whether I wanted to take the oath before God to swear the whole truth or the affirmation. Convinced though as I was of the soundness of my submission, I had not thought to submit it as evidence to whose truth I would have to swear. Nor had I thought that I would be questioned by the Commissioners, in effect cross-examined, once my sworn oral submission had closed. As the Hearing progressed, I found myself riveted by the way in which participants either directly or indirectly engaged with some of the central questions of legal and political philosophy.

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*South Africa's judges were in the limelight, but we cannot judge them without at the same time subjecting ourselves to judgment.*

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Afterwards, I attempted to make sense of the Hearing in my book *Judging the Judges, Judging Ourselves: Truth, Reconciliation, and the Apartheid Legal Order*. I tried in particular to grapple with the issue which perplexed me during the Hearing and after. This issue was most perspicuously put by a friend who observed that the critique unleashed by the Hearing is like a wrecking ball demolishing on all sides. It is relentless, leaving no shelter behind which to hide, except finally fidelity to law. Put differently, not only those who were involved directly in the Hearing, whether through participation or through being brought under its scrutiny, but all who can imagine themselves in their position, find that the process poses difficult and quite personal moral questions. South Africa's judges were in the limelight, but we cannot judge them without at the same time subjecting ourselves to judgment.

Archbishop Desmond Tutu said in his opening address to the Legal Hearing, that it was the “most important of the professional hearings”, almost as important as the “victim/survivor hearings”. His reason was that law was used as the instrument of apartheid but also seemed to hold out some promise of curbing its worst excesses. He told of what it was like to grow up as a black child in a world of daily humiliation, not only of oneself but, inevitably more painful, of one's parents. That humiliation, he pointed out, was enshrined in the law of the land, laws whose violation demanded the sanctions of the criminal law, branding as criminals people attempting to exercise basic human rights.

In my view, Tutu's observation about the Hearing's importance was right. The Hearing forced the connection to be made between the ordinary violence of apartheid, the daily oppression authorized by law, and the extraordinary violence of apartheid, the illegal violence of agents of the state inflicted on those who opposed apartheid. By examining together the administration of statutes which set out the program of apartheid and the statutes which set up the framework for suppressing opposition to apartheid, the Hearing revealed the continuum between ordinary and extraordinary violence.

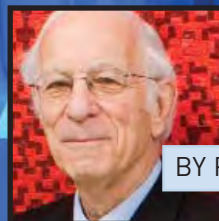
Judges and magistrates upheld those laws, even interpreted them so as to give maximum effect to their policy. The Attorneys-General saw to the prosecution of violations of apartheid law. The legal profession, divided between the Bar of advocates who enjoyed an exclusive right of audience before the Supreme Court and the side-Bar of attorneys whose extra-curial work included instructing the advocates, by and large participated in sustaining apartheid law or did their best to ignore it. And the legal academy managed for the most part to educate their students and to write about the law as if apartheid did not exist.

In other words, the law was not self-executing under apartheid. It required administration, application and interpretation by judges, magistrates, prosecutors, officials of the Departments of Justice and Law and Order, and lawyers, both in the academy and the legal profession. Apartheid law was in large part the statutes enacted by the National Party controlled Parliament, which enjoyed a legislative supremacy unchecked by any written constitution. But it was also the law that arose out of decisions made by civil servants, the judiciary, and the legal profession. And the great majority of lawyers had a legal education which failed to make apartheid and its law part of the curriculum, and also did not generally give students critical tools for understanding their society.

So at the Legal Hearing two related questions were put to those who staffed the legal order. How was it that you implemented without protest, and often with zeal, laws that were so manifestly unjust? And how was it that when you had some discretion as to how to interpret or apply the law, you consistently decided in a way that assisted the government and the security forces?

The second question especially interested me as it presumes an intrinsic relation between law and justice, despite the horrors of apartheid law. And that is the question I focus on in my account of the three days in Johannesburg when an entire legal order was put on trial. ■

# The Kimber Committee on Securities Legislation



BY PROF. MARTIN L. FRIEDLAND

**IN JANUARY 1964** I received a call from Jack Kimber, the chair of the Ontario Securities Commission, asking me if I would be interested in doing research for a committee he was heading on legislation relating to corporate securities. The previous October, the Attorney General of Ontario, Fred Cass, had established a committee – formally known as the Attorney General’s Committee on Securities Legislation in Ontario, but usually referred to as the Kimber Committee – with wide terms of reference that included “to review and report upon, in the light of modern business conditions and practices, the provisions and working of securities legislation in Ontario and in particular to consider the problems of take-over bids and of ‘insider’ trading, ...”.

The immediate cause for the creation of the Kimber Committee was concern over a controversial takeover bid by Shell Canada for the shares of Canadian Oil. There were at the time no legislative rules for dealing with takeovers, although there had been a voluntary code since 1963, and many thought that insiders in such cases had a distinct advantage over other shareholders because of their special knowledge of the bid.

The original members of the committee had included Kimber, as Chair, along with two highly respected securities lawyers, Hal Mockridge of Osler, Hoskin & Harcourt, who acted for such major companies as Inco, and Bob Davies, who, at the age of 38, was the senior partner of what would become Davies, Ward & Beck, now the high-powered firm of Davies Ward Phillips & Vineberg. Kimber was a gentle, thoughtful, pipe-smoking lawyer, who had left the firm of Kimber and Dubin in 1957 for the less hectic life of a master of the Supreme Court of Ontario. It was not unusual for a master to head the OSC. Kimber continued as a part-time master, but became a full-time chair of the commission after the committee that he chaired recommended that the position be a full-time one.

My Dean supported my participation, even though I had my hands more than full with a number of other projects. There would be two other staff members, Purdy Crawford, a young lawyer at Oslers, who would go on to become a corporate CEO and still later one of the most – if not the most – influential commentator on securities legislation in Canada, and Howard Beck of Davies, Ward and Beck, who would also become a respected securities lawyer. Crawford had grown up in Nova Scotia – his father was a coal miner – and was a graduate of Dalhousie Law School, while Beck grew up on the opposite coast, in British Columbia, and was a UBC law graduate.

Jack Kimber and I worked out a satisfactory rate of remuneration, \$100 a day, and a vague title – Legal Associate. I did not want to be called a ‘research assistant,’ even though that is what I would be. I am not sure why I was asked to do work for the committee. Perhaps Kimber had heard of me when I was an articling student with his old firm. My background in commerce and finance would have seemed a plus to the committee, although I had not taught company law or securities regulation and did not know very much about capital markets.



The meetings of the Kimber Committee were held in the boardroom of Osler, Hoskin & Harcourt, then in a building at the north-west corner of Yonge and King Streets. I prepared memoranda on various aspects of the topics with which the committee had been asked to deal. They covered a wide range of subjects. There were, for example, memos on the duty of a director to shareholders, on tracing transactions on the stock exchange, on aspects of the federal companies Act, on Harvard law Professor Louis Loss’s views on various issues, on English scholar L.C.B. Gower’s writings, and more. These memos have been filed with my papers in the U of T Archives. In looking through them, I must say that I am impressed with the quantity of material I produced – fifteen memos between January and July 1964. Similarly impressive was the number of hours I put in and the bills I submitted.

One difficulty that I encountered was that some members of the committee – in particular Bob Davies – did not want the staff, and particularly me, to participate fully in the deliberations of the committee. I felt strongly that if I was to be a useful member of the team I had to be fully involved in the discussions. Kimber smoothed things over in his calm, fair-minded way. Purdy, Howard and I were actively involved in all aspects of the policy discussions, but we recognized, of course, that the final decisions were for the committee to make.

In collaboration with Purdy and Howard, I started producing preliminary drafts of the report for the subjects included in the committee’s terms of reference. The first such memo, in February 1964, was on insider trading. Later drafts included one in May on take-over bids, and in June on primary distribution on the exchange. By the end of the summer there were drafts on all of the sections of the report.

Public hearings took place in October 1964. I was permitted to participate fully in the questioning. The *Globe and Mail* reported an exchange I had with B. Dale-Harris, the chair of the chartered accountants’ committee on securities regulation, in which I asked him what he thought about disclosing the combined salaries of the three most highly-paid officers of the



Professor Friedland has been involved over the years in many federal and provincial inquiries. In the mid-1960s, for example, he did work for the Joint Committee on Legal Aid, the Minister of Reform Institution's Committee on Regional Detention Centres, and the Attorney General's Committee on Securities Legislation. All are described in detail in his recently published memoirs, *My Life in Crime and Other Academic Adventures* (U of T Press, 2007), from which this excerpt on the Kimber Committee is drawn. As will become readily apparent to anyone who is familiar with Prof Friedland's writing, this excerpt does not do justice to the original. Readers are encouraged to read the entire chapter in his book.

company. His answer: 'Putting in the top three is very close to catering to vulgar curiosity.' The Kimber Committee took a similar view and recommended that disclosure be made, without a specific breakdown, of the aggregate salaries of the board and a number of top executives, which would have to include the five highest-paid employees performing similar functions.



It was difficult for the committee members to find the time for sustained collective discussions. Mockridge and Davies, in particular, were constantly being asked to take urgent calls. A decision was taken by the committee to find a retreat where there would be a minimum of distractions. In late November, all members of the committee and the three staff persons went to England, where we would thrash out the report at a small hotel, now called Bailiffscourt Hotel, on the south coast of England near Climping. The hotel was built by Lord Moyne as a private residence in the twentieth century, but modeled after an ancient castle. This did not stop the telephone calls. Both Mockridge and Davies were involved in issues concerning the recently discovered and controversial Texas Gulf Sulfur mine and were periodically called to the telephone.

The report was more or less drafted in England. It went through a number of further drafts after we returned and was made public on Friday, March 26, 1965. The editorial writers generally liked the report. On the other hand, there was considerable opposition to our recommendations with respect to primary distribution of securities directly from the company or its promoters through the stock exchange. The *Northern Minor* dramatically headlined: 'Eggheads' Report Sheds No Light On Primary Distribution.' That topic drew the most attention.



Canadian securities – and particularly mining stocks – had been receiving a bad name throughout North America. The American comedian George Jessel had a routine involving Canadian securities, which I heard on Johnny Carson's

*Tonight Show* at least once during the deliberations of the Kimber Committee. Jessel told about the calls he was getting to buy shares in a hot new mining property in moose pasture country in Ontario. Each call passed on the news that the price of the shares was rising. Jessel kept buying. Again and again, the call came that the price was going up and Jessel kept buying more stock. Finally, he said to the broker, 'Sell!' The punch-line was the broker's ungrammatical reply – 'To who?' It drew a terrific laugh from Johnny and the audience. I recall Kimber saying the next morning how destructive such stories were to the Canadian securities industry and bolstered his conviction that something had to be done.

While the Kimber Committee was collecting evidence, the Windfall affair took centre stage and showed dramatically how markets could be manipulated and the public duped. The company, an empty shell that had been listed on the exchange and had not been delisted, had acquired some land close to the recently-discovered Texas Gulf Sulfur bonanza near Timmins, Ontario. After test drilling and rumours of a successful result, Windfall started selling the promoters' shares through the Exchange. I happened to be at the Exchange on Monday, July 6, 1964, the day in which a million and a half Windfall shares were sold, almost one-tenth of the total TSE volume that day. When the bubble eventually burst, the investors lost their money. It was like the Bre-X mine affair in Indonesia in the late 1990s.

The Kimber Committee recommended in its report that primary distribution through the exchange be banned in Ontario. The government did not accept that recommendation, although it gave the securities commission greater control over the exchange. The commission would have to approve all of the TSE by-laws and could order the exchange to adopt practices that were in the public interest. In all other areas, however, the Kimber Committee's recommendations were adopted without significant changes and now form the foundation of today's securities legislation across the country. There have, of course, been many subsequent changes in the legislation giving the investor greater protection. ■

# Inquiring Into Terrorist Financing and the Misuse of Canada's Charities

**I**n the world's deadliest terrorist attack involving aircraft prior to September 11, 2001, 329 people including 280 Canadians and 136 children were killed when Air India Flight 182 was blown up over the North Atlantic on June 23, 1985.

A decade later, many Canadians were shocked to learn that the Babbar Khalsa Society – a militant organization dedicated to the establishment of an independent state in northern India, members of which are believed to have planned the Air India bombing – had been granted charitable status in Canada. Although the organization's charitable status was revoked in 1996, reports also suggested that funds collected to support Sikh temples in Canada may have been diverted to support Sikh militancy in India.

For these reasons, when the federal government established a Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 (the Air India Inquiry), it included in the Commission's terms of reference a mandate to determine "whether Canada's existing legal framework provides adequate constraints on terrorist financing through "the use or misuse of funds from charitable organizations."



BY PROF. DAVID G. DUFF

In order to assist the Inquiry on this issue, I was invited to prepare a detailed research report on Canada's legal framework for constraining terrorist financing through charitable organizations. In November 2007, I appeared before the Commissioner to discuss my conclusions.

My report and my testimony examined three aspects of Canada's legal framework governing charities and terrorist financing: first, how Canada's constitutional division of powers affects the regulation of charities; second, the legal rules and administrative practices governing charitable status under the federal Income Tax Act (ITA), including the special procedure for denying or revoking this status under the Charities Registration (Security Information) Act (CRSIA) which was enacted as part of the federal government's anti-terrorism legislation in 2001; and third, the legal rules and practices for the collection and sharing of information regarding the operation of "suspect" charities. The following is a brief summary of my conclusions.

Beginning with the constitutional division of powers, it is my opinion that divided jurisdiction in our federal system

creates a major challenge to effective regulation of the charitable sector. Although subsection 92(7) of the Constitution Act, 1867 grants provincial legislatures exclusive authority to make laws in relation to "Charities and Eleemosynary Institutions in and for the Province," most provinces have decided either not to exercise this jurisdiction or have done so only sparingly.

*...federal and provincial governments should cooperate to establish a more robust regulatory regime for charities and other nonprofit and voluntary organizations...*

In contrast, the federal government exercises considerable regulatory authority over charities pursuant to its taxation power under the federal Income Tax Act (ITA). This federal power is limited, however, since it relates only to eligibility for tax benefits, rather than the integrity and vitality of the charitable sector more generally. Although there are roughly



Renee Sarojini Saklikar touches the names of her aunt and uncle, Dr. Umar and Zebunnisa Jethwa, on the wall of the Air India Memorial unveiled in Vancouver Friday, July 27, 2007. (CP PHOTO/Richard Lam) CANADA

160,000 nonprofit and voluntary organizations in Canada, for example, only half of these are registered charities subject to regulation under the ITA. Nor can the federal government exercise broad supervisory power over charities, such as the power to remove directors or trustees and appoint other persons in their place, since these powers are not ancillary to the federal taxation power and fall within provincial jurisdiction.

For these reasons, I recommend that federal and provincial governments should cooperate to establish a more robust regulatory regime for charities and other nonprofit and voluntary organizations, including a greater range of regulatory responses than tax-based penalties and sanctions.

Turning to the rules governing charitable status under the ITA and the CRSIA, my report contained three conclusions and one recommendation.

**FIRST**, because terrorist financing would not qualify as a charitable activity under the traditional common law categories set out in the famous Pemsel case (which recognized as charitable activities the relief of poverty, the advancement of education, the advancement of religion, and other purposes beneficial to the community), the CRSIA is not strictly necessary as an additional legal tool to deny or revoke charitable status. Indeed, the Canada Revenue Agency (CRA) has not even used the CRSIA since it was enacted in 2001, and acknowledges that any organization that would be denied charitable status under the CRSIA would also fail under the ordinary criteria for charitable status under the ITA.



Professor David Duff testifying at the Air India Inquiry, November 2007

*It is important to ensure that these operations are effectively monitored and that information about terrorist financing is effectively exchanged among government agencies.*

Notwithstanding this, however, a special procedure for denying or revoking charitable status may be justified where security considerations demand that the information on which this determination is based should remain confidential. Nonetheless, while this consideration may justify legislation like the CRSIA, the extremely broad grounds on which charitable status may be denied or revoked under this legislation and the limited procedural protections available to charitable organizations under the CRSIA are not necessary to the legislation's legitimate purposes. For this reason, I am sympathetic to the concerns expressed by the charitable sector that the CRSIA has created a chilling effect on important charitable work that might otherwise occur in areas of the world associated with conflict and terrorism. For this reason, as well, I recommend that the CRSIA should be amended to include a knowledge or negligence requirement for financing terrorist activities or a due diligence defence, as well as intermediate sanctions short of revocation where charitable funds inadvertently or incidentally finance terrorist activities.

**FINALLY,** I conclude that since the effective enforcement of legal rules and administrative guidelines governing charitable organizations ultimately depends on the collection and exchange of information on their operations, it is important to ensure that these operations are effectively monitored and that information about terrorist financing is effectively exchanged among government agencies.

Although a number of improvements have been made over the last several years with respect to the collection, sharing and public disclosure of information about charitable organizations, the number of registered charities that are subject to annual audits is less than one percent of all registered charities, and there remain various limits on the sharing and public disclosure of information about registered charities. As a result, I recommend that there be various amendments to statutory rules and administrative practices governing the collection and sharing of information on charitable organizations.

Returning to the mandate of the Inquiry, a number of legislative amendments over the past decade have significantly improved the effectiveness of Canada's legal framework to constrain the use or misuse of charitable organizations for terrorist financing – the most important of which are increased information disclosure and sharing among government agencies, the introduction of intermediate penalties and sanctions in the ITA for relatively minor transgressions that do not justify revocation of charitable status, and the enactment of the CRSIA.

Were these measures in place in the late 1980s and early 1990s, it is difficult to imagine that the Babbar Khalsa Society would have been able to obtain charitable status or retain this status until 1996, and difficult to imagine that Sikh temple funds would have been misused for terrorist financing.

Even so, further measures should be taken to collect and share information on charitable organizations, and to devise a more robust federal-provincial regulatory regime for charities and other nonprofit and voluntary organizations. At the same time, concerns about terrorist financing through charitable organizations do not justify overbroad and procedurally suspect legislation like the current CRSIA. ■



# Financing Terrorism: Canada's Legal Regime Under Scrutiny



BY PROF. ANITA ANAND



Professor Anita Anand was a key witness at the Air India Inquiry in

2007, where she was asked to comment

on Canada's legal approach to combating the financing of terrorist activities. How effective are our legal regimes and instruments that are in place to combat the financing of terrorism?

What are the costs imposed on the private sector in monitoring and reporting financial transactions? And what is the right balance to strike between privacy rights and deterring the financing of terrorism? These are the main questions Anand addressed in her testimony.

What follows is a condensed excerpt from her full report.



## With international terrorism

a daily feature of the news, and claims by some that Canada is a “haven” for terrorists, it might be tempting to jump to the conclusion that we need more, and tougher, anti-terrorist laws. However, law generally, and anti-terrorist financing law specifically, should not be viewed as a panacea that can cure all political evils. Law is a tool, and, at times, a limited one. Unless we know whether current law is effective, we should not be keen to create additional legal requirements. This is because regulation is costly, and ineffective regulation imposes unnecessary costs on both public and private actors.

Anti-terrorist financing law did not exist in 1985 when Air India Flight 182 was bombed. By contrast, today the *Criminal Code* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* cover significant regulatory ground and accord with private and public international law on terrorist financing.

Section 83.01(1)(a)(x) of the *Criminal Code* defines “terrorist activities” as including acts committed outside or inside Canada that if committed in Canada would constitute an offence under section 83.02 in relation to providing or collecting property intending or knowing that it will be used for terrorism.

While the *Criminal Code* addresses a variety of activities that relate to terrorist financing (from providing property, to assisting in terrorist financing, to money laundering) and criminalizes such activity, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* deals with reporting requirements, cross-border movement of currency, and the creation of an agency to administer the Act.

Under section 7 of the Act, defined individuals and entities report transactions “in respect of which there are reasonable grounds to suspect that the transaction is related to the commission of...a terrorist activity financing offence.” In addition, if these individuals and entities

are required to make a report under section 83.1 of the *Criminal Code*, they must also make the report to the agency.

This Canadian regime that governs the financing of terrorism is relatively new – and because it has been in existence for less than a decade, it is difficult to know whether the regime has been and is effective in combating the financing of terrorism. However, this is not to say that the regime is ineffective. Rather, before new law is implemented, an assessment of the efficacy and efficiency of the current regime is required. Indeed, it is my contention that the difficulty with these two pieces of legislation is not any gap in their substantive content, but rather in knowing whether the regime they create is effective in fulfilling its stated objectives of preventing and disrupting the funding of terrorists.

Assessing the impact and effectiveness of a regulatory instrument can be difficult. In the securities regulatory area, for instance, it has taken two decades of examining the low number of convictions in the insider trading area to reveal that either the regulatory regime is ineffective and/or the enforcement of the law has been weak. On the contrary, terrorist financing law is relatively young, which makes evaluation of the efficacy of that law difficult. However, this does not mean that such an evaluation is not warranted.

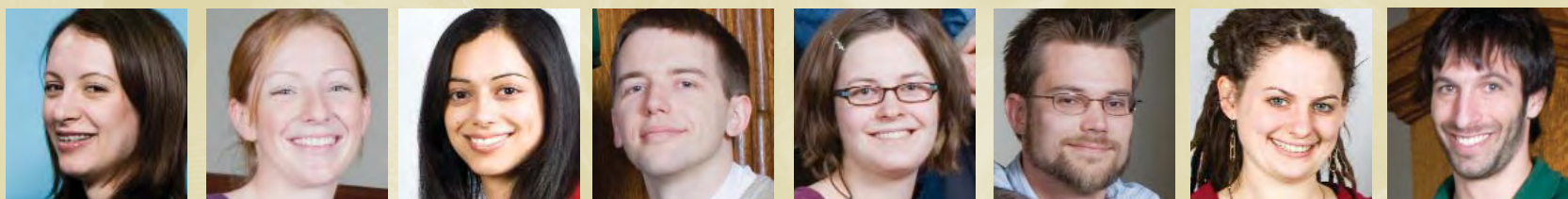
There are means to assess the legal regime. For example, to what extent do reports of suspicious transactions reveal information of actual terrorist financing? How many convictions have there been under the *Criminal Code* terrorist financing offences? Are the channels that are currently in place for sharing of information among agencies being utilized? These crucial questions should be examined to assess the current regime.

This assessment would be a first step towards understanding whether (and where) additional laws are necessary. This is a pragmatic approach. Our expectations about what law can achieve should be reasonable and well informed. That is, we should not advocate a specific set of legal reforms in the absence of evidence that this particular reform (as opposed to other available alternatives) is warranted. This is because regulation is costly in the sense that it imposes burdens on the regulated. Those burdens may indeed be justified, but they must be proven to be so. Otherwise, the regulation is nothing more than an experiment, and usually a costly one.

The time is ripe for a full-fledged assessment of Canada’s current anti-terrorist financing regime in order to determine whether its infrastructure functions effectively. Indeed, the federal government should not implement new law unless and until the effectiveness of existing laws and institutions are assessed. ■

# FOCUS ON STUDENTS

From their first year of law school our students are exposed to the uniquely Canadian instrument of judicial investigation and inquisition – the public inquiry – and the seeds are planted for more in-depth learning in upper years. In the following pages we offer highlights of student involvement in public inquiries – from the classroom, to real life work on documenting and helping to rectify past violations of human rights for Canada’s Aboriginal Peoples.



# Students Explore Right to Truth Around the World

**FOLLOWING** years of acrimonious litigation around the legacy of abuse in Canada's Indian residential schools, an important settlement was reached in 2006 that included, as part of its terms, Canada's first "Truth and Reconciliation Commission."

The Indian Residential Schools Truth and Reconciliation Commission will look specifically at the history of abuse in Indian residential schools in Canada. Its goal will be to acknowledge and document the past injustices and harms experienced by Aboriginal peoples as result of forced attendance at the schools for almost a century.

Under the leadership of Sarah Perkins, Acting Executive Director of the law school's International Human Rights Program, a handful of law students has formed an official "working group" to provide research support to Canadian Lawyers for International Human Rights. CLAIHR is a non-governmental organization that is monitoring, researching and raising awareness about the important issues in this groundbreaking initiative in Canadian history.

U of T Faculty of Law alumna, Jillian Siskind (LLM 2005) is President of CLAIHR. Along with one of the project coordinators, Rachelle Dickinson, also a board member and 2004 graduate of the law school, Siskind is thrilled to be working with law students. "We have been so fortunate to have such a talented and enthusiastic group of students at U of T helping us with this project," says Siskind. "Our work together on the emerging right to truth provides a unique opportunity for the students and CLAIHR to become involved in a real human rights issue from the ground up."

Over the winter semester, students involved in the group conducted research into the history of truth and reconciliation commissions around the world. "The new Indian Residential Schools Truth and Reconciliation Commission has an important role to play in truth telling and the creation of a historical record of past violations of human rights," says Perkins. "It has the potential to lay a foundation for the future relationship between Canada and its Aboriginal peoples. I am proud



*"The new Indian Residential Schools Truth and Reconciliation Commission has an important role to play in truth telling and the creation of a historical record of past violations of human rights,"*

Sarah Perkins, Acting IHRP Executive Director

(L-R): Anatoly Vlasov, Clea Amundsen, Mark Gustafson, Ben Kates, Kaley Pulfer, Laura Baron, Acting IHRP Executive Director Sarah Perkins, and CLAIHR President Jillian Siskind. Missing from the photo is Laura Baron



*“Victims of gross violations of international human rights law have the right to be provided with full rehabilitation, satisfaction and guarantees of non-repetition.”*

Jillian Siskind, CLAIHR President

that our students are involved in this important project.”

Both CLAIHR and the law students emphasize the importance of ensuring that Canada’s Truth and Reconciliation Commission comply with various international human rights norms.

“As a preliminary step in ensuring that the Truth and Reconciliation Commission achieves this objective, the law students researched information about 46 different truth and reconciliation commissions from around the world,” says Perkins. “The students analysed the final reports of these commissions in order to identify their reference and application of international human rights law, the kinds of recommendations made, and how they have attempted to achieve their stated goals,” she adds. “They also looked at the legal mechanisms and methods of recording a truthful record employed in countries with similar histories to Canada’s residential schooling, such as Australia.”

The group will be focusing the next phase of its research on the ‘right to truth’ as an emerging norm of customary international law. Siskind explains: “Victims of gross violations of international human rights law have the right to be provided with full rehabilitation, satisfaction and guarantees of non-repetition. The right to know the truth is an additional collective and individual right which requires states to provide information on the causes of the event, the reasons, the circumstances and conditions of the violations. This emerging right has been gaining acceptance by treaty bodies, regional courts and international and domestic tribunals.”

For more information on upcoming CLAIHR events or to request more information on how to get involved with the organization, please visit [www.claihr.ca](http://www.claihr.ca). ■

# Public Inquiry or Truth Commission: What's in a Name?



In the last two decades, “truth commissions” have become a common means used by emerging democracies throughout Central and South America as well as other parts of the world as a means for countries to address and grapple with horrific human rights abuses in their pasts. Despite many examples from Uganda to Chile, truth commissions are still rarely used in established democracies such as Canada which are more comfortable with the “public inquiry” model. Graduate law student, Kim Stanton, wants to know why that is.

**A**re truth commissions a useful way to examine historical injustice in established democracies? If so, are they any different from public inquiries, which are more commonly used in Canada? These are the questions that Stanton is trying to answer in her SJD dissertation which is expected to be completed in 2009. Recently *Nexus* had the opportunity to talk to Stanton to find out more about her perspective on this intriguing issue.

“I’m interested in knowing why it is that while the public inquiry model is quite common in Canada, our country has been generally reluctant to adopt the truth commission as a model.” she says. “No one questions that truth commissions are a unique

mechanism for addressing the past. There is certainly debate over how effective they may be, but those that have engaged in a definitional exercise have tended to stress the exceptional character of the truth commission and its place as a ‘transitional justice’ mechanism,” she adds. “The implication is that they are inappropriate for established democracies such as ours.”

Stanton’s dissertation tracks in historical detail the emergence of truth commissions, beginning in the 1970s and their growth in popularity over the next 25 years. *Nexus* asked her to elaborate on this.

“The first historical inquiry called a ‘truth commission’ occurred in Uganda in 1974. It was established by Idi Amin under that country’s public inquiries legislation with an eye to warding off international criticism of human rights abuses under his rule,” says Stanton. “In that case, the report was not published, nor were its recommendations implemented. The next truth commissions appeared in the 1980s as a wave of democratization passed through Central and South America. There were truth commissions in Bolivia in 1982, Argentina in 1983 and Uruguay in 1985. These were followed by commissions in Chile in 1990 and El Salvador in 1992. A second truth commission occurred in Uganda, as well as commissions in Chad and Zimbabwe in the 1980s and into the 1990s,” she adds.

Stanton relays that perhaps the most famous truth commission, with the greatest resonance among the general public, occurred in the mid-1990s – the South African Truth and Reconciliation Commission, chaired by Bishop Desmond Tutu. She notes that in the 1990s, truth commissions became much more common, with six truth commissions established between 1992 and 1993 alone. Transitional justice as a field of legal study also gained traction during the 1990s, she adds.

Why it is then that established democracies that regularly hold public inquiries are reluctant to have truth commissions? Or, why don’t we call our public inquiries truth commissions?

“It might be our government’s confidence in its existing institutional model to address past injustice,” suggests Stanton. “It may also be that we don’t feel we are human rights abusers. That is, our government might believe that massive human rights violations may occur in “other” places, perhaps less “developed” democracies, but not here,” she adds.

Stanton believes that argument is problematic. “We are content to recommend, support, fund and advocate for truth commissions in emerging democracies, but we feel our institutions are fine. But I don’t think we have to look any further than Canada’s Indian residential schools legacy to see why that argument is false,” she says. “Indeed, we are about to have a truth and reconciliation commission on the Indian Residential Schools legacy, but this has only come about as a result of the legal settlement of class action suits by survivors.”

She also acknowledges a more benign possibility – that truth commissions are really just public inquiries under another name. “Truth commissions may be expected to have more consultation in their set-up, focus more on victims and have fewer lawyers in their hearings, but what they do in terms of

a mandate is the same as a public inquiry: they investigate a politically sensitive aspect of a country’s past, report upon it, and make recommendations for how it may be avoided in the future,” she says.

## *Why it is then that established democracies that regularly hold public inquiries are reluctant to have truth commissions? Or, why don’t we call our public inquiries truth commissions?*

*Nexus* asked Stanton, why is it that she is so interested in the name? “Even if a truth commission is essentially just a public inquiry, it does connote an additional moral aspect missing from the public inquiry,” says Stanton. “The administrative or bureaucratic guise of a public inquiry is perhaps insufficiently attractive to the public eye, while a body called a ‘truth commission’ suggests a more weighty concern for the issues before it as well as the possibility that the truth has somehow been obscured in the past, deliberately or otherwise,” she suggests.

“I would also add that when a public inquiry is specifically named as a ‘truth commission’, it may indicate that the social function of the public inquiry is at the forefront of the mandate. Not only will the commission be expected to educate the public on what human rights violations happened in a society, but it will be expected to emulate a lawful institution, respectful of human rights,” she says.

The bottom line for both, she adds, is setting the story straight about history and ensuring that all citizens are aware of the abuses of the past. ■

In 2006, Kim Stanton was part of a research team for Dean Mayo Moran, that included fellow students Alán Garcia Campos, Debbie Chan, Annie Leeks and Sara Mainville, who conducted comparative research on truth commissions in order to propose terms of reference for Canada’s historic Truth and Reconciliation Commission (“TRC”) on Indian Residential Schools. A lengthy report was drafted under the direction of the Dean and was submitted in 2006 to the Hon. Frank Iacobucci in his capacity as the federal government’s lead negotiator for the Residential Schools settlement agreement, as well as to Bob Watts, interim Executive Director of the TRC, in the hopes of assisting the parties to learn from the international experience with respect to creating a truth commission.

# Bringing the Real World Into the Classroom:

## Law students learn about Canada's Legacy of Public Inquiries

**PERHAPS** more than any other faculty member, Professor Kent Roach's name has been synonymous with public inquiries. Along with Professors Darlene Johnston and Peter Russell, Kent was part of the research advisory committee for Justice Linden's Commission of Inquiry into the fatal shooting of Aboriginal protester, Dudley George, and Justice O'Connor's research advisory committee in the Maher Arar Inquiry. He was also Director of Research for the Air India and Pediatric Forensic Pathology Inquiries and writes about his experience in this role on pages 44 to 47 of this issue of *Nexus*.

Fortunately for the law school and our students, Professor Roach's extensive inquiry experience has been making its way into the classroom where students benefit from his knowledge, insights and unique vantage point. "My experience with both Arar and Air India has influenced my upper year course on anti-terrorism law and policy. My forensic pathology inquiry experience will also help in the part of my wrongful conviction seminar that examines the role of expert evidence," says Roach.

In addition, for the last two years, Roach has helped co-ordinate a one week bridge program for first year students on truth, justice and public inquiries which exposes students to some of the finest commissioners and lawyers in the country, as well as to members of the public who are directly affected by the inquiry process.

"The bridge week provides a unique experience for students to hear first hand about some of the most important controversies of the day, and to explore the limits of the adversarial system used in criminal and civil trials," says Roach. "The students are asked to consider what a public inquiry can achieve that criminal and civil trials cannot, as well as to critically evaluate both the weaknesses and strengths of public inquiries," he adds.

This year's first-year bridge course treated students to special lectures by Associate Chief Justice Dennis O'Connor and retired Justice Peter Cory who talked about ways to improve the inquiry process. Also on the agenda were Professor Michael Trebilcock, and former Premier of Ontario and alumnus Bob Rae '77, who talked about the disadvantages of relying on full and costly public inquiries. Rae also talked about his own experience in investigating the Air India bombing. Mark Freiman '83, who provides a personal commentary at page 76 of this issue, spoke candidly to students about his role as Commission Counsel for Air India, drawing upon his experience with government and the media.

"It is sometimes too easy in law school to forget the human suffering and violence that lies behind so many of the public inquiry cases," says Professor Roach. "One of the most compelling aspects of this year's public inquiries bridge was the opportunity for students to hear directly from family members of some of the Air India victims." The law school was also honoured to have Sam George speak to students about his experience in seeking truth and justice in the wake of his brother Dudley George's death at Ipperwash. With



much to say about his extensive engagement with the legal system in seeking the truth about why his brother was shot and killed, Mr. George captivated students with his accounting of the criminal trial, the civil lawsuit and finally the inquiry process. These and other moments during the bridge week serve as an important reminder of the human side of the law.

Each year, students also hear about the challenges of conducting public inquiries in cases involving secret information. Topics of discussion include the Arar Commission run by Justice O'Connor, and the ongoing Internal Inquiry into the activities of Canadian officials in relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, conducted by former Supreme Court of Canada Justice Frank Iacobucci.

This panel exposes the students to some of the complexities of the law surrounding national security confidentiality, and also raises important questions of how much the public inquiry process depends on engagement with the public.

Canada's numerous public inquiries into wrongful convictions were also top of the agenda with students hearing directly from panelists including Mark Sandler '78, Marlys Edwardh and James Lockyer. Professor Michael Code also spoke about his experience as Commission Counsel for Justice Lesage's inquiry into the wrongful conviction of James Driskell.

Other highlights of the bridge week included a panel co-ordinated by Professor Darlene Johnston on the Ipperwash inquiry, with alumnus Katherine Hensel '03 speaking from experience on the important role that Assistant Commission Counsel play, and a discussion of international truth commissions, with Professor David Dyzenhaus speaking about South Africa's Truth and Reconciliation Commission and in particular the question of the accountability of judges for the role they played in apartheid. ■



# FOCUS ON ALUMNI

Having been exposed to important public policy issues during law school, many alumni continue to serve the public interest through their involvement in public inquires during their professional careers. In our Alumni Focus section, *Nexus* showcases the experiences of a number of our most distinguished alumni whose contributions to high profile inquires are helping to shape important public policy for our country.



# The Goudge Inquiry

## Inquiry Into Pediatric Forensic Pathology in Ontario

By Justice Stephen Goudge '68,  
Commissioner, The Goudge Inquiry

**ON APRIL 25, 2007**, the Province of Ontario established the Commission to conduct a systemic review of the practice of pediatric forensic pathology and its oversight mechanisms, from 1981 to today. As Commissioner of the Inquiry Into Pediatric Forensic Pathology in Ontario, my task is to identify any systemic failings, and make recommendations to restore and enhance public confidence in pediatric forensic pathology in Ontario, and particularly its future use in investigations and criminal proceedings.

From the start, I have received invaluable assistance from Commission Counsel Linda Rothstein ('80), Special Counsel, Criminal Law, Mark Sandler ('78), Assistant Commission Counsel Rob Centa ('99), and their enormously talented team.

Beginning in June, I met privately with individuals and families affected by practices in Ontario's pediatric forensic pathology system. All who met with me did so voluntarily. This was not part of the Commission's fact-finding process.

Nonetheless, the insights I was given in those meetings has been important in anchoring our work in real human experiences.

In October, I visited two Aboriginal communities in Northern Ontario, Mishkeegogamang and Muskrat Dam. I met with the leaders and with individuals and families who have suffered the tragedy of unexpected infant deaths. These meetings brought home to me the enormous challenges in Ontario of making available services like pediatric forensic pathology to remote northern communities in general, and in particular, to Aboriginal communities.

Formal hearings commenced on November 12, 2007. Because it is a systemic inquiry, the examination of individual cases has been very important but only as it helps identify systemic failings. I asked Commission Counsel to streamline the hearing process. With the consent of the parties, Commission Counsel entered into evidence 18 overview reports, comprising 1638 pages, which summarized the facts relevant to 18 of the



cases under review. They have proved to be of remarkable assistance.

During the oral testimony phase, I heard from 47 witnesses in 52 hearing days spread over 11 weeks. Where possible, Commission counsel has called these witnesses as panels.

Commission counsel also facilitated 14 policy roundtables, two of which took place in Thunder Bay. The panellists participating in the roundtables, a stellar group of experts from around the world, were not sworn, nor were they cross-examined, but provided the Commission with a wealth of insight and wisdom.

As I begin writing my report, I am very grateful for the hard work, professionalism and civility demonstrated by all counsel throughout our proceedings. It will be of great assistance as we address these difficult questions of public policy. ■

*The panellists participating in the roundtables, a stellar group of experts from around the world, were not sworn, nor were they cross-examined, but provided the Commission with a wealth of insight and wisdom.*

Justice Stephen Goudge

(L to R): Rob Centa '99, Alexa Sulzenko '08, Andrew Martin '09, Linda Rothstein '80, Mark Sandler '78, Maryth Yachnin '04 and Justice Stephen Goudge '68

# The Iacobucci Internal Inquiry

By John B. Laskin ('76) and John A. Terry ('87)

*As we write this, we are about to embark on one of the most innovative parts of our inquiry, intended to bring participants more deeply into our process.*

John B. Laskin ('76)

## **WE ARE LEAD AND CO-LEAD COUNSEL**

**RESPECTIVELY** to the Honourable Frank Iacobucci, the Commissioner appointed to conduct the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin.


Our inquiry has a unique mandate. As the adjective “internal” suggests, it is a presumptively private investigation. Its focus is on the actions of Canadian security intelligence, law enforcement and foreign affairs officials, most of which were carried out within the realm of national security confidentiality. But the issues we are investigating – whether these officials’ actions were deficient and led to the detention and mistreatment of these three Canadian citizens abroad – are of much more than private interest.

Our inquiry stems from a recommendation by Justice O’Connor in his Arar Inquiry report. He recommended that the Almalki, Abou-Elmaati and Nureddin cases be reviewed “through an independent and credible process.” But he also stated that “[t]here are more appropriate ways than a full-scale public inquiry to investigate and report on cases where national security confidentiality must play such a prominent

role.” Our goal, working with Commissioner Iacobucci, has been to find this “more appropriate way.” We would not be candid if we claimed this was a simple task.

Our terms of reference require the Commissioner to take “all steps to ensure that the Inquiry is conducted in private,” but also authorize him “to conduct specific portions of the Inquiry in public if he is satisfied that it is essential to ensure the effective conduct of the Inquiry.” He is required to produce both a confidential report and “a separate report ... suitable for distribution to the public.” With these provisions as guideposts, the Commissioner has adopted a process that has allowed us to carry out a thorough private investigation, accompanied by measures aimed at allowing all Inquiry participants to have input into our fact-finding process.

The private nature of the investigation has given us complete and expeditious access to a massive record of protected documents. There have been no drawn-out fights over redacting documents for national security reasons – from the start, all of the documents produced to us have been unredacted. Unlike the ordinary practice in public inquiries, most of the witness examinations have taken the form of interviews under oath – really depositions – conducted by counsel without



*There is no ready-made template for conducting an inquiry. Each is unique and context-dependent.*

John A. Terry ('87)

(L to R): Jasminka Kalajdzic '95, John A. Terry '87, The Hon. Frank Iacobucci, John B. Laskin '76, Barbara Jackman '76 and John Norris '91.

the Commissioner present. The Commissioner has directly participated in certain key examinations and also read all transcripts. We have found this process efficient and effective. We have wondered on occasion whether the witnesses would be so forthright in a more public setting.

We are acutely aware that this private investigative process, for all of the benefits that it provides, is frustrating for the three men and the intervenors in the Inquiry, who do not have access to the confidential part of the Inquiry. We have met with them and their counsel periodically to inform them as much as we can about the private investigation. They have been parties to our public hearings to establish our procedure and determine the standards to be applied in assessing the actions of Canadian officials. We have also carried out lengthy interviews with each of the individuals about their alleged mistreatment in Syria and, in Mr. Abou-Elmaati's case, Egypt as well. Yet we know – because they have told us and stated publicly – that they consider our process to be inadequate.

As we write this, we are about to embark on one of the most innovative parts of our inquiry, intended to bring participants more deeply into our process. Based on our investigation to date we have prepared a detailed draft factual narrative. We are currently preparing a non-confidential version, edited only to the extent necessary to protect national security confidentiality. In May 2008 – four months before the Commissioner's reports are due – we will provide counsel for all participants with this draft non-confidential summary. They will then have an opportunity to submit additional evidence, request that we carry out further investigations, and make submissions on the basis of the draft.

As we have carried out our work over the past year, it has become clear to us that there is no ready-made template for conducting an inquiry. Each is unique and context-dependent. We have worked with Commissioner Iacobucci to design a process appropriate to our circumstances. Time will tell whether it is a useful model for the “more appropriate way” that Commissioner O'Connor envisaged. ■

# The Air India Inquiry

By Mark J. Freiman ('83), Commission Counsel

Commission of Inquiry into the Investigation  
of the Bombing of Air India Flight 182



*Unlike adversarial modes of civil or criminal litigation, public inquiries imply an “inquisitorial” role for both the Commissioner and Commission Counsel.*

Mark J. Freiman ('83)

L to R (standing): Abigail Dushman '08, Prof. David Duff '99, Prof. Kent Roach '87, Sayran Sulevani '08

L to R (seated): Raj Anand '78 and Mark Freiman '83.

**T**hough they may look a bit like civil or criminal trials, public inquiries are profoundly different in their goals, assumptions, rules and outcomes. They are also different in the roles they assign to counsel and in particular to Commission Counsel. In the end, it is those differences that help define the unique challenges and the unique rewards of acting as Commission Counsel in a public inquiry.

The uniqueness of public inquiries is related to both parts of their name – their status as “inquiries” and the provision that they be “public”.

Let me illustrate by reference to the Air India Inquiry for which I have the privilege of acting as Commission Counsel. The matters being “inquired into” relate to events that occurred almost 23 years ago. On June 23, 1985, a bomb exploded on board Air India Flight 182 en route from Toronto via Montreal to New Delhi. The bomb was a home-made device, the work of extremists seeking revenge against the Government of India. It was placed in the casing of a tuner, and concealed in checked luggage on a flight originating in Vancouver and transferred to the hold of Air India Flight 182 in Toronto. When it exploded in mid-air over the Irish Sea,

it killed 329 men, women and children, the overwhelming majority of them Canadian residents and/or citizens.

This tragedy became the subject of both civil and criminal litigation. Both ended rather inconclusively, the civil litigation with a confidential settlement in lieu of a trial and the criminal prosecution with one plea arrangement and two acquittals.

Despite the same basic subject matter, the goals of the Air India Inquiry are quite different from the goals of the previous litigation. In civil or criminal litigation, the basic goal is to establish what happened – who did what, to whom, by what means, and with what consequences – in order to determine civil or criminal liability. By contrast, determining civil or criminal liability is expressly outside the mandate of any public inquiry.

For a public inquiry, establishing the historical record can be important for its own sake. In the Air India Inquiry, the families of the victims found themselves after more than two decades, despite the criminal prosecution and despite several books on the subject, with many questions and few answers. The unique investigative powers of a public inquiry make it possible for new facts to emerge and many, perhaps startling new facts, have emerged at the Air India Inquiry.

While civil and criminal litigation are focussed on the past and on assigning liability for deeds done, the focus of a public inquiry is on the future and on learning lessons from the past. The Air India Inquiry Terms of Reference ask Commissioner Major whether, in light of the experience of the Air India bombing and its aftermath, changes are needed in a number of areas including the assessment of terrorist threats, the co-operation between police and intelligence agencies, the criminal procedure for terrorism prosecutions, the protection of witnesses from intimidation, the regulation of aviation security and the tools used to combat terrorist financing. These are enormously important and enormously complex issues that make unique demands on the Commissioner and on Commission Counsel.

Unlike adversarial modes of civil or criminal litigation, public inquiries imply an “inquisitorial” role for both the Commissioner and Commission Counsel. For judges and lawyers trained in the adversarial system, such a role can seem unfamiliar, even disorienting, but the Commissioner and Commission Counsel are meant to work together in the process, with counsel under the direction of the Commissioner sifting through, probing and presenting the evidence that allows the Commissioner to make the policy recommendations sought in the Terms of Reference.

The second aspect of public inquiries implied in their name is their “public” character. Although convened by government, an inquiry is carried out in the interests of the public. In the Air India Inquiry, this has meant that despite complications arising from the national security sensitivity of some of the evidence, the Inquiry has conducted its hearings entirely in public.

A further implication of its “public” character is that although the Inquiry is undoubtedly the result of determined, persistent and well-justified advocacy by the families of the victims, the ultimate audience is a wider one and its educative aspect extends to the Canadian public at large.

Although the fact of the bombing of Flight 182 is widely known, it has not perhaps been very deeply understood. It was at the time the deadliest act of aviation terror ever committed. Even after the events of September 11, 2001, its toll is higher per capita for Canada than 9/11 was for the United States. Yet, as Commissioner Major has noted, the Air India bombing has not fully entered our collective consciousness as an act of terrorism suffered by Canada or as a specifically Canadian tragedy. One of the main public education goals of the Air India Inquiry has been to address this issue.

For my own part, I will never forget the three weeks at the outset of the hearings during which family members told their stories. It takes a special sort of courage to be willing to appear in public and lay bare intimate moments of suffering and loss, not with any hope for gain, but in order to try to make others comprehend the enormity of the crime and the devastation of its impact. Although the family members were largely – though by no means exclusively – of South Asian extraction, their stories, some conveyed eloquently, others haltingly, made them clearly recognizable as our neighbours, our co-workers, our friends and our fellow Canadians. Theirs was the human face for the suffering that terrorism engenders. Theirs also, as shown in their stories, was the triumph of endurance and the persistence of hope.

The Commissioner’s Final Report will, no doubt, have pertinent and cogent recommendations addressed to his challenging mandate. It may be, however, that the testimony of the families, if it helps Canadians understand the price of terrorism and that Canadians have already paid that heavy price, may have an equally profound effect.

And that may be yet another way in which this Public Inquiry is different. ■



**ON MAY 1, 2006, THE HON. MR. JUSTICE JOHN MAJOR ('57)** was appointed Commissioner of the Inquiry Into the Investigation of the Bombing of Air India Flight 182. Highlights of Justice Major's distinguished career include his involvement in a number of high profile cases and public inquiries, including: Counsel for the Canadian Medical Protective Association (Alberta), 1971-91; Senior Counsel for the City of Calgary Police Service, 1975-85; Counsel at the McDonald Commission re RCMP, 1978-82; Counsel, Royal Commission into the collapse of the CCB and Northland Bank (Estey Commission); and Senior Counsel for the Province of Alberta at the Code Inquiry into the collapse of the Principal Group of Companies, 1987. He was appointed to the Alberta Court of Appeal, July 11, 1991; and appointed to the Supreme Court of Canada, November 13, 1992, where he served until his official retirement from the bench on December 25, 2005. The U of T Faculty of Law awarded Justice Major with its highest honour – the Distinguished Alumnus Award – on February 2, 2006.



(L to R): Katherine Hensel '02,  
Mark Sandler '78  
and Prof. Darlene Johnston

# The Ipperwash Inquiry

By Katherine Hensel ('02)

**D**udley George was killed during a confrontation between OPP Crowd Management and Tactical Response Units and First Nations people occupying Ipperwash Provincial Park, in September, 1995. He was the first First Nations person to be killed in the course of a land dispute in over 100 years. For eight years following his death, his family worked tirelessly to find out why and how Dudley was killed, and pressed for a public inquiry. In October, 2003, the newly elected government of Premier Dalton McGuinty called the Ipperwash Inquiry, and appointed Justice Sidney Linden as Commissioner. Commissioner Linden was given a mandate to inquire into circumstances surrounding the death of Anthony “Dudley” George in September, 1995, and to make recommendations with the objective of avoiding violence in similar circumstances in the future.

The Commission undertook its work against a complex backdrop of police-government relations and rumours of improper interference by members of the provincial government into police operations. No less complex were issues raised by Canada’s historic relationship with First Nations, the appropriation of the Stoney Point Reserve by the Department of National Defence in 1942, the surrender of reserve land containing First Nations burial sites (in 1928) in what eventually became Ipperwash Provincial Park, and the successive occupation by First Nations people of the appropriated Army Base (in 1993), and then of the Provincial Park (in 1994).

I am an Aboriginal lawyer, called to the bar in 2003, after graduating from the University of Toronto, and articling at McCarthy Tetrault and Aboriginal Legal Services of Toronto. I was hired as Assistant Commission Counsel to the Inquiry in February, 2004 along with Commission Counsel, Derry Millar of WeirFoulds, LLP. At the time, I was working as a litigator at the Toronto office of McCarthy Tetrault and had been a lawyer for all of 8 months. For a fledgling litigator, the experience of working with a public inquiry was inspiring and unique. As much as inquiry proceedings may resemble court proceedings, they are fundamentally different in their purpose. Courts are generally called upon to choose between two options: guilty or not guilty (in the criminal context) and liable or not liable (in the civil context). All the rules of procedure and evidence are intended to assist courts in gathering the

*The success of a public inquiry cannot be measured through its hearings, or when its report is issued; it likely takes decades to properly assess whether a public inquiry was worth the effort, and whether it accomplished anything at all.*

Katherine Hensel ('02)



information required to make that binary choice, and that choice is generally the only task that the courts have jurisdiction to undertake.

Public inquiries have a very different objective. They are usually called to inquire into events so tragic, complex, controversial and pressing that the legislature believes the public interest is served by initiating a process that will invariably be time consuming, expensive, and painful, all with a view to keeping such tragedies from occurring again, and to fixing whatever was wrong enough to give rise to the tragedy. They are not intended to determine guilt or innocence, or assign liability. Commissioners must determine what happened, why it happened, and how it can be prevented from happening again. Any and all evidence necessary to fulfill that mandate must be called. If a Commission fulfills its mandate, it produces an account of what has happened infused with enough detail, nuance, and insight to explain why the tragedy occurred, and to inform recommendations that will be effective in preventing anything like it from happening again. The success of an Inquiry depends on whether the measures recommended are adopted by governments, and whether those measures are successful in preventing future tragedies. So the success of a public inquiry cannot be measured through its hearings, or when its report is issued; it likely takes decades to properly assess whether a public inquiry was worth the effort, and whether it accomplished anything at all.

At the Ipperwash Inquiry, I had the privilege of working alongside some of the most experienced and talented counsel in the country. We were particularly fortunate to be joined by Donald Worme, a senior Cree lawyer who joined us as Commission counsel in June, 2004. His experience at other public inquiries, including as counsel to the Stonechild family at the Saskatchewan Inquiry into the Death of Neil Stonechild, and as a pre-eminent First Nations lawyer, was invaluable to the Commission, and to me as a much younger First Nations lawyer. Under his guidance, with the assistance of elders, the communities at Kettle and Stony Point and Aazhoodena, and the affected families, we were able interview most, if not all,

of the dozens of First Nations men, women and children who were present when Dudley George was shot and killed, many of whom eventually testified at the Inquiry, along with dozens of police officers, medical staff, civil servants and politicians involved in the events surrounding Dudley George's death.

Although I did not know it at the time, my studies at the Faculty of Law from 1999 to 2002 were great preparation for the work I would be doing shortly after my graduation. I learned about treaty relationships, Aboriginal law, and the Anishnawbe people from Professor Darlene Johnston, who went on to provide invaluable assistance as an expert witness to the Ipperwash Inquiry and serve as a member of its Research Advisory Committee. I also learned about numerous other public inquiries from Professor Kent Roach, who uses the findings of the Royal Commission on the Donald Marshall, Jr. Prosecution, the Manitoba Justice Inquiry, the Royal Commission on Aboriginal Peoples, and the Kaufman Commission on Proceedings Involving Guy Paul Morin as tools in his first year criminal law class, to demonstrate what can and does go wrong when tunnel vision, racism, and incompetence interfere with the proper functioning of the criminal justice system.

As a First Nations person, I knew that First Nations people across the continent would join Ontario's public in watching our work intently, and would be counting on the Commission to find out how Dudley George died, and why. I knew we had a tremendous amount to learn about Anishnawbe culture and history, and the people and circumstances at Kettle and Stony Point First Nation and Aazhoodena, as well as the political, legal and cultural experiences of on-reserve communities. Professor Johnston, Don Worme, the elders we came to know during the course of the Inquiry, and the people at Kettle and Stony Point First Nation and Aazhoodena were generous enough to assist me by teaching us a great deal.

Dudley George's death was a tragedy. The Report of the Ipperwash Inquiry tells the story of that tragedy. First Nations people use stories as vehicles for preserving and transmitting knowledge and laws through the generations. It was a privilege to assist in the telling of this story. ■



Former Attorney General of Ontario, Michael Bryant, with Justice Sydney Linden.

**JUSTICE SIDNEY LINDEN '64**, Commissioner for the Ipperwash Inquiry, has demonstrated throughout his career a genuine commitment to public service and access to justice in Ontario. After leaving private practice in 1980, he was the first Police Complaints Commissioner for Metropolitan Toronto and Chairman of the Police Complaints Board. From 1985-1987, he was Executive Director of the Canadian Auto Workers Prepaid Legal Services Plan. In 1987, he was appointed as Ontario's first Information and Privacy Commissioner, and was responsible for starting up the Agency and serving as Commissioner until April 1990 when he was appointed Chief Justice of the newly reorganized Ontario Court of Justice (Provincial Division). Since 1999, and until his appointment as Commissioner of the Ipperwash inquiry, Justice Linden served as Chair of the Board of Legal Aid Ontario while on leave from the Ontario Court.

## David Asper

### Makes Record \$7 Million Gift to Faculty of Law for New Constitutional Centre



David Asper '07, a recent alumnus with a lifelong commitment to the fundamental rights and freedoms enshrined in Canada's Constitution, has made a groundbreaking gift to the Faculty of Law. He recently donated \$7.5 million – the largest gift to a law school in Canadian history – to establish the David Asper Centre for Constitutional Rights.

A leading Canadian businessman, philanthropist, lawyer and Executive Vice-President of CanWest Global Communications Corp., Mr. Asper has expressed his delight at playing a significant role in the faculty's recently announced building renewal and expansion plans. "I am very pleased to do my part in helping make the Centre, and the redevelopment of the law school become a reality," said Asper.



David Asper '07

Dean Mayo Moran says that Asper's gift will have a transformative effect on constitutional rights both at home and abroad. "Canada is a world leader on issues of fundamental human rights but until now these efforts have been diffuse. David's gift will enable us to play a vital role in articulating Canada's constitutional vision to the broader world," said Dean Moran.

The faculty, she adds, has been at the forefront of scholarship, teaching and test case litigation on the country's most important constitutional issues. "The David Asper Centre for Constitutional Rights will take that outstanding tradition to an entirely new level. It is a gift that will enhance access to justice, foster sophisticated debate, and immeasurably enrich the education and opportunities for students to participate in that debate," she said.

For his part, David Asper sees the gift as an extension of his long held interests in issues of social justice.

"Rights, freedoms and the rule of law are everything if we are to achieve enduring success as a civilization. This goal does not happen with the flick of a switch. It takes deep commitment to test, study and evaluate our state of freedom on an ongoing basis. The establishment of the Centre is a start," said Asper.



Former Supreme Court Justice Frank Iacobucci, who is at Torys LLP leading the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, called the development “wonderful news.” Canada, he notes, has been cited by countries around the world on the structure of the Charter and the interpretation of fundamental rights.

“It will add to the continuing study and the understanding of the tension between collective interests and societal interests, and individual rights. It will also concentrate on access to justice for constitutional adjudication, which is extremely important and deserves support,” said the Hon. Iacobucci.

*David Asper has always demonstrated a deep commitment to combating injustice, and a willingness to take innovative measures to better protect the rights of all people.*

The Asper gift also represents the first major contribution to the law school’s building project.

David Asper, a lawyer by profession, completed a Masters in Law at the UofT Faculty of Law in 2007. In the mid-1980s, he acted as co-counsel for wrongfully accused David Milgaard in his appeal to the Supreme Court of Canada. Today, in his capacity with CanWest Global he has demonstrated consistent leadership defending the rights and freedoms of the press. He was instrumental in promoting CanWest’s successful fight

to quash a warrant and application for a writ of assistance for documents given to a National Post reporter working on stories about what has come to be known as Shawinigate. CanWest also teamed up with the Ottawa Citizen in a second case involving reporter Juliette O’Neil. In that case a judge threw out search warrants used by the RCMP to search her home and office for information about a confidential source in the Mahar Arar case.

Professor Kent Roach, who supervised Asper’s masters thesis, said that David Asper has always demonstrated a deep commitment to combating injustice, and a willingness to take innovative measures to better protect the rights of all people.

“In addition, he was also a wonderful student who drew on his experience having been David Milgaard’s lawyer, and his lifelong passion for discovering and preventing miscarriages of justice,” added Professor Roach.

Asper has been a Director of CanWest since 1997 and CanWest MediaWorks Inc. (and its predecessor companies) since 2000. He joined the CanWest group of companies in 1992 and is currently an Executive Vice-President of CanWest and CanWest MediaWorks Inc. and Chair of The National Post Company. He teaches law school courses on wrongful convictions, and is a member of the UBC Innocence Project Advisory Board. Recently, he was also appointed to the Chief Justice of Canada’s Judicial Council of Canada Advisory Group.

The new David Asper Centre for Constitutional Rights will expand the Faculty’s intellectual development, philosophical breadth and reach in an unprecedented manner. The Faculty of Law gratefully acknowledges David Asper’s landmark gift, his vision and his unwavering commitment to the pursuit of justice. ■

# The Patrick Garver Bursary



(L-R): Chris Sweeney, Chairman, ZSA, Patrick Garver, Dean Mayo Moran, and Jim Middlemiss, Legal Editor, National Post.

Patrick Garver, winner of ZSA’s 2006 Canadian General Counsel of the Year award, has generously donated his \$70,000 winnings to establish the Patrick Garver Bursary at the Faculty of Law. Garver is not an alumnus of U of T – he did his JD at the University of Utah. However, his wife, Judith Hinchman, took a number of joint accreditation courses at the faculty in order to qualify to practice law in Ontario when the couple made the move from Utah to Toronto for his job with the Barrick Gold Corporation.

“My wife had an excellent educational experience at the faculty. So, when we received word of the award, it was really an easy choice as to what do to with the funds,” says Garver.

Garver was chosen as Canadian General Counsel of the Year for his excellence, his ability to deal with complexity across both issues and jurisdictions, and his irrefutable sure-handedness in dealing with numerous challenges. The advisory board that selected Garver noted that the role he has played in his company’s overall health and well-being was a deciding factor, and that his leadership experience as Senior Vice President and General Counsel, and subsequent promotion to Executive Vice President and General Counsel at Barrick made Garver an ideal candidate for the award.

Garver was appointed Senior Vice President and General Counsel of Barrick Gold Corporation in December 1993, and Executive Vice President and General Counsel in December 1995. He oversees all legal matters for Barrick, one of the world’s leading international gold mining companies.

In the little spare time that he has, Garver enjoys cooking, painting, biking around Toronto and trying to get used to his relatively new status as an “empty nester”. Garver and

“...his leadership experience as Senior Vice President and General Counsel, and subsequent promotion to Executive Vice President and General Counsel at Barrick made Garver an ideal candidate for the award.”

Hinchman’s two children, who consider themselves completely Canadian, are doing their undergraduate studies at Duke University.

The Faculty of Law congratulates Patrick Garver on his well-deserved professional award, and gratefully acknowledges his generosity and dedication to supporting current law school students with their studies. ■



# The Joseph and Josephine Astaphan Bursary

## Created By Kris Astaphan in Honour of His Parents

Kris Astaphan is a U of T man through and through. He holds a B.Sc. ('74); MBA ('77), and an LL.B ('84) all from U of T, and was called to the Ontario Bar in 1986. He recently made a \$50,000 gift to the Faculty of Law in honour of his parents – Joseph and Josephine Astaphan.

“My first purpose for creating this bursary was to pay tribute to my parents, who supported 10 siblings and 2 nephews in their pursuits of higher education. They knew that education was a route to freedom. Despite being of very modest means, and being from a relatively poor Caribbean island (St. Kitts), they made sure that each of us got the best education possible and gave us each the opportunity to gain a profession,” said Astaphan.

“My second reason for establishing this bursary was to commemorate the fact that I would not be where I am today without the law school education that I received from U of T. Lastly, I wanted to take a step to do whatever I can to help make sure that no student in Ontario – or even Canada – loses the opportunity to complete a legal education due to a lack of funds,” he added.

From 1986-93, Astaphan worked at Aird & Berlis in taxation law. He has

also held various executive positions within the AIC Group from 1993 to 2005. He served as the Executive VP of AIC Limited and the Deputy Chairman of the National Commercial Bank (Jamaica) Limited.

Since 2005, he has been pursuing a number of start-ups, including an Energy company that he says will be a big winner in Hydrogen Storage and Distribution (lessening demand for fossil fuels and reducing carbon emissions).

“Kris is an accomplished and committed alumnus whose generosity means a huge amount to the law school,” said Dean Mayo Moran. “We are tremendously grateful for his support.”

Astaphan has two daughters in university, one in Ontario and one in Quebec. His father passed away in 1999 but his 87-year-old mother currently divides her time between her home in St. Kitts and visiting her children and grandchildren who are spread out around the world. By creating a bursary in their names, Astaphan is able to honour his parents' deep commitment to education, and help others at the same time.

“And this gift,” he adds, smiling, “is just the beginning”. ■



Kris Astaphan ('84) pictured along with his two daughters, Kristel and Rebecca

*I would not be where I am today without the law school education that I received from U of T.*

## New Fund Established For Acquisition of Law Books

U of T Professor Josiah Blackmore, an expert in medieval Spanish and Portuguese from the Department of Spanish and Portuguese, has made a donation to the Bora Laskin Law Library in memory of his father, Professor Josiah Blackmore II, a legal scholar, who served both as the law school dean and former president of Capital University in Columbus, Ohio.

The donation will be used to acquire books in the areas of legal procedure, legal ethics, jurisprudence and justice.

Professor Josiah Blackmore II started his career as a sole practitioner representing underprivileged clients in family law matters and ended up a beloved university president. His son characterized him as “a scholar, administrator and humanitarian.” The Faculty of Law is grateful to his family for commemorating his illustrious career and life with their gift to the Bora Laskin Law Library.

# Remembering our Friends

## EUGENE GARNER OKANEE '98



Eugene Garner Okanee graduated from the faculty in 1998. He was a proud member of the Cree community, and spoke Cree fluently. He practiced criminal law in Toronto until his untimely death earlier this year. Professor Jim Phillips spoke at Eugene's memorial in Toronto. The following is an abridged

version of his remarks. "My condolences to the Okanee family. It must be very hard indeed to lose a brother at so young an age. It must seem unnatural. All I can say is that we professors feel the same way about the passing of a student or a former student; it should not happen this way.

I remember Eugene very well. I can recall a number of conversations with Eugene about how things were going in his first year and throughout his law school career.

His answers to my questions were rarely long, but they were to the point. He told me that it wasn't easy, but that he was handling it. The work was a challenge, Toronto was unusual and daunting. But Eugene was clear that he could handle everything. He was doing OK, and he was going to



succeed. He conveyed a lot in a few words. He was clearly a very determined young man as well as a very intelligent and hardworking and committed one. Eugene was set on succeeding, and despite the difficulties he did so admirably." Eugene Okanee was 39 years old at the time of his passing.

The Faculty of Law also notes the passing of the following law alumni, and honours the wishes of their families by listing their names in *Nexus*.

Rex Bishop '81

Irwin Cass '51

Emmett Coughlan '61

Kenneth Bull Danson '69

Anne Dubin '50

Brian Lloyd Morris '71

Wallace Andrew William Scott '49

## ARNOLD ROSEN '74

Renee Rosen, Arnold's wife, wrote in to share her memories of her late husband, and some reflections about his personality, and great loves. "Arnie had a perpetual curiosity and quest for knowledge. He was interested and well-informed about almost everything. He had a brilliant mind and earned a degree in Patent and Copyright Law and a Master's degree in Engineering Science. Along with all his accomplishments, he was also very handy and could fix or build anything, but he wasn't great at sports. However, after turning 50, his sporting career blossomed and he became an avid biker, rollerblader, skier and hiker. When he wasn't fixing things, or out for a bike ride, he was busy with his many other hobbies, like gardening, fishing, bird watching and various collecting hobbies. He especially loved photography. Arnie was a loving husband and a devoted father to his two sons, David and Jeffrey. He was very proud of his boys. He was never without his cameras and took pictures of everything the boys did, all their sporting events, their hobbies, their school events and their social activities. He saw David graduate in 2006, and in June 2007, he saw Jeff graduate. Even though he was so gravely ill at that time, he mustered up all his strength, took his cameras, took hundreds of pictures and actually appeared healthy. He enjoyed every minute of the graduation. Arnie was never bored or boring. He passed away as a result of mesothelioma – a horrendous asbestos related cancer and we miss him very much."



*When he wasn't fixing things, or out for a bike ride, he was busy with his many other hobbies, like gardening, fishing, bird watching and various collecting hobbies. He especially loved photography.*



## CARL ABRAHAM STONE '49

Carl Stone ('49), was born and raised in Orillia, Ontario. His wife, Arlene, describes him as a good hearted man who was known for the way in which he treated all people fairly. "He loved the challenge of the law, and loved helping people," she says. In addition to maintaining a thriving general law practice in Toronto's east end, he found time to volunteer for the Kiwanis club and at the Baycrest Home for the Aged. Carl and Arlene were married for 56 years. He was a dedicated father to their three children Nancy, Bill and Janet, a loving grandfather to their six grandchildren, and is sorely missed.

*His wife, Arlene, describes him as a good hearted man who was known for the way in which he treated all people fairly. "He loved the challenge of the law, and loved helping people," she says.*

BY THE HON. HORACE KREVER '54

**C**ommission-of-inquiry bashing is a time honoured sport. Formerly known as royal commissions, commissions of inquiry are ancient institutions and, I am confident, will, despite regular predictions to the contrary, continue to be appointed for more than a life in being plus twenty-one years. In 1960, the brilliant A. P. Herbert, revered by law students and lawyers of my generation, published a monograph entitled *“Anything But Action? A study of the uses and abuses of committees of inquiry.”* He prefaced it with an extract from his splendid satirical poem *“Sad Fate of a Royal Commission”* which told the tale of the interminable Royal Commission on Kissing. In the essay Herbert said:

“The Royal Commission is not a new joke. An historian of the Tudor age wrote: ‘from this time (1517) the idea of a Royal Commission was never absent from the minds of politicians.’

It is the Ascot of the sport of inquiry...”

The bashing tradition continues but, sadly, without the playfulness of Sir Alan.

...historically, including recent history, reports of commissions of inquiry have been engines of enlightened public policy. The association between commission reports and policy and legislative reform is remarkable.

The rules of the sport are straightforward. An issue arises. A demand, followed by more demands, for the creation of a commission of inquiry is made. The government of the day adamantly rejects the demands. The demanders, a member of an opposition party, a columnist, an editorial writer, criticizes the government for its rejection. The demands become louder; more editorials follow. The government appoints a commission of inquiry. The first period is over; its goal, successfully achieved, was the creation of a target to shoot at. Now the second, and most important, period begins.

The critics take over. The inquiry will be a white-wash. It represents “anything but action.” It is a waste of taxpayers’ money; its spending is profligate. It takes too much time. It is a denial of natural justice – a star-chamber court. There are many other grounds, but that will give the flavour of the criticism and, as I have said, often the pundits – not infrequently professors – predict that the inquiry in question will be the end of inquiries.

The reality is that historically, including recent history, reports of commissions of inquiry have been engines of enlightened



public policy. The association between commission reports and policy and legislative reform is remarkable. Here is a small sample: Rowell-Serois – dominion/ provincial relations; Bladen – Canadian/ American autopact; McDonald – separation of national security from policing; Dubin – drug-free sports; O’Connor – safe drinking water; and the one that is almost the definition of Canadian identity, Hall – medicare.

That, in the long history of commissions of inquiry, there have been abuses and recommendations that were never implemented, cannot be denied. The usefulness and success rate of the institution, however, ensure that governments will continue to resort to it and, therefore, happily for the critics, they will continue to play – and continue to prophesy the end of commissions of inquiry. The game must go on.

I myself am no stranger to public inquiries. I have conducted dozens of them under such statutes as the *Employment Standards Act*, the *Ontario Human Rights Code*, and the *Amateur Athletics Act* (the “Golden Gloves” boxing inquiry). But here I speak of full-fledged commissions of inquiry under the federal *Inquires Act* or the provincial *Public Inquiries Act*. I have been a commissioner in three of them, the Committee on the Healing Arts (a three-person commission) conducted while I was a member of this faculty; the Commission of Inquiry into the Confidentiality of Health Information; and the Commission of Inquiry on the Blood System in Canada. It is for others to pass judgment on the quality of the contribution, if any, that these inquiries made to public policy. But I can say that the enactment of the *Health Disciplines Act* and the *Personal Health Information Protection Act* and a safer blood supply system followed the release of the reports of these inquiries.

My experience has taught me that commissioners know, and, indeed, expect that the game I have described will be played. But that does not deter them. After all, who is opposed to sports? ■



Interested in having your recently published book noted in the next issue of *Nexus*?

Please drop us a line along with a high resolution image of the book cover.

Submissions may be sent by e-mail to [laura.rosencohen@utoronto.ca](mailto:laura.rosencohen@utoronto.ca)

Or by mail to:

**University of Toronto Faculty of Law  
Nexus**

78 Queen's Park, Toronto, ON  
Canada M5S 2C5



SAVE THE DATE

# 2008

## R E U N I O N

**Friday, Oct. 24  
and Saturday, Oct. 25**

Alumni who graduated in a year that ends in "3" or "8" are invited back to the law school in October for special reunion festivities.

All honoured years are invited to a cocktail reception in Flavelle House on Friday, October 24th from 5:00 p.m. - 7:00 p.m.

Class events will be organized for the Friday or Saturday evening. If you would like to be involved in planning your class event please contact **Corey Besso** in the Alumni & Development Office at [corey.besso@utoronto.ca](mailto:corey.besso@utoronto.ca) or 416-946-8227

# CLASS NOTES



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

Submissions may be sent by e-mail to [laura.rosencohen@utoronto.ca](mailto:laura.rosencohen@utoronto.ca) before December 31, 2008.

Or by mail to:

**University of Toronto Faculty of Law  
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WALKERTON INQUIRY

IACOBUCCI INTERNAL INQUIRY

ROMANOW COMMISSION

GOUDGE INQUIRY DRISKELL INQUIRY

AIR INDIA INQUIRY

KREVER COMMISSION

IPPERWASH INQUIRY

GOMERY INQUIRY

KIMBER COMMITTEE ARAR INQUIRY

RESIDENTIAL SCHOOLS INQUIRY

