

# nexus

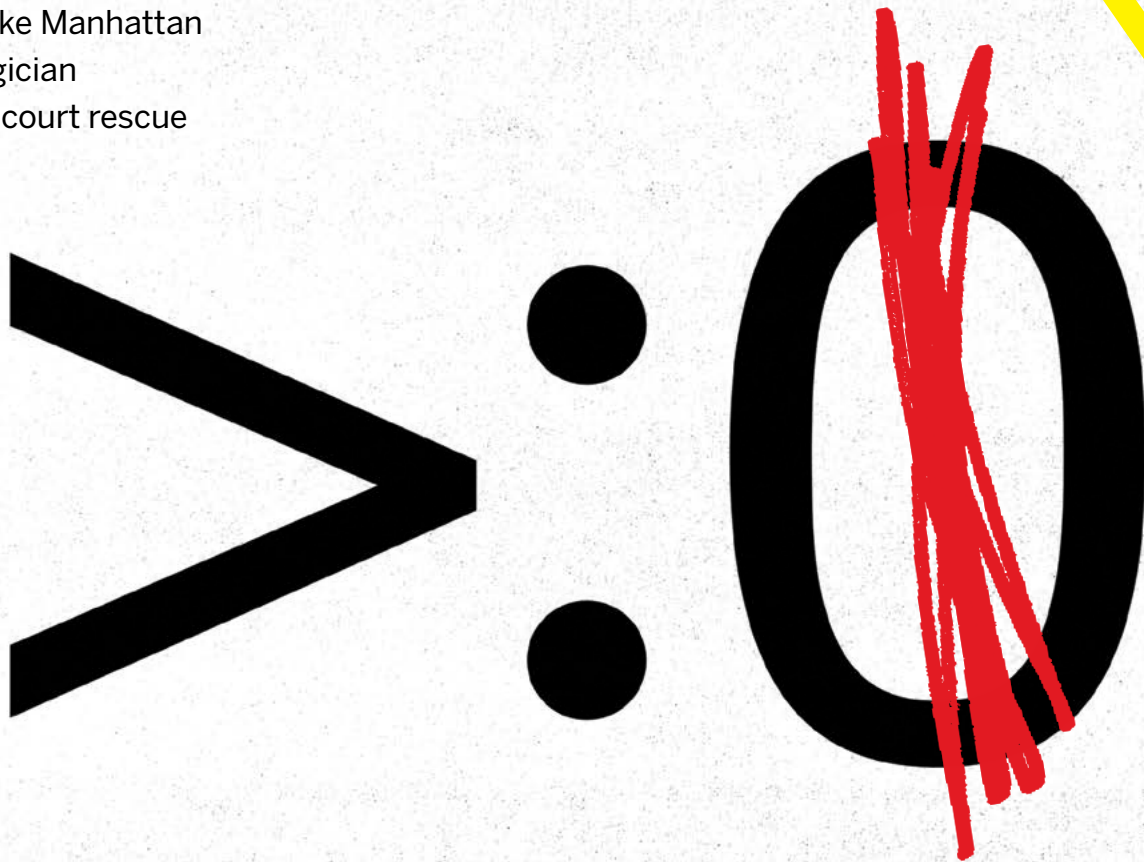
THE UNIVERSITY OF TORONTO FACULTY OF LAW ALUMNI MAGAZINE  
FALL/WINTER 2013

## Crusade against cyberbullying:

How to stand up to a 21st  
century problem when  
society has yet to catch up

### PLUS:

First we take Manhattan  
Movie magician  
Operation court rescue



UNIVERSITY OF TORONTO  
FACULTY OF LAW

## IN MEMORIAM:

# James M. Tory 1930-2013

## Class of 1952, Faculty of Law's first gold medallist

BY RICHARD J. BALFOUR, PARTNER, TORYS LLP



Jim Tory was one of the greatest lawyers of his time—in the view of his partners, the greatest.

Jim was brilliant intellectually, with a legal mind at least the equal of those of our country's most eminent legal academics and judges. It was particularly fitting that in 1996 the partners of Torys endowed in his name the Dean's Chair at the University of Toronto law school.

For his colleagues, what stood out about Jim were his quickness of thought and unerring judgment and his unique role was based on them. From time to time, the senior people in a transaction team would conclude that we had reached a "JMT issue", one requiring consultation with him. After the sketchiest background presentation, Jim was fully engaged. We always left his office knowing we had been put on the right track with respect to the matters that had brought us there. And as often as not, he had also had a flash of insight about an aspect that we had underthought or missed altogether.

In forging our strategy and in all other fundamental matters of our development, Jim was in charge. Our focus on corporate and securities law, and neighbouring areas, in addition to our restrained growth, both of which differentiate us from most of our competitors, were key parts of Jim's vision. And his final

step at the helm of the firm was his implementation of his own succession. Characteristically, he understayed his time.

Beyond everything else, Jim provided a moral compass. Summing up at a celebration of his 80th birthday, Jim cited as core values for our firm, "integrity, humanity and professionalism" and those values were of course first his. While the strongest legal skills were necessary, it was essential to do what was right and to do so constructively and with decency.

Surely one of the reasons why Jim accomplished as much as he did was the way he dealt with people. He treated everyone alike and with consistent warmth. And he coupled that with a disarming and beguiling style that was strikingly informal and relaxed.

Jim Tory was a man of exceptional intelligence, intuition, business vision, leadership skills, moral wisdom and personal warmth. We will not see the like of him again. His death brings to an end the era in which he formed his firm. It is the profound responsibility of those of us who continue at Torys to ensure that his values stay alive. ↵

*This is an abridged version of the tribute Richard Balfour gave at the celebration of life for Jim Tory in the fall.*

# nexus

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## On track to build the law school of the future

What a fantastic fall term we had! We were busy with a number of exciting conferences, workshops and activities that highlighted the faculty's global research expertise and the exceptional leadership of our alumni and student body.

Over the summer, we transitioned very smoothly to our temporary home just across the street at Victoria University, as we embarked on our renewal project—the Jackman Law Building construction. We are all excited about the new building and so grateful to all of you who have helped to make it a reality.

This fall saw the launch of an Innovation Law Clinic in partnership with Norton Rose Fulbright, our first experiential learning opportunity in the evolving field of patent law. Judges and speakers from all over the world also explored patent law developments at our second annual Patent Law Colloquium. Another terrific cohort of Global Professional LLMs graduated in November, ready to tackle the international business world. And Reunion weekend was fantastic, with almost 400 alumni and their families coming out to our many events, which this year included the popular hard-hat demolition tour!

We know our impact is felt far beyond our campus walls. Here's just a sampling:

We tracked down alumni working on the technological scourge impacting our children and teens, in "Crusade against cyberbullying," p. 22. At the same time, we interviewed an alumna using the cyber-world to increase access to justice, "Lawyer engineers a better law firm—online," p. 33. You'll read about alumni kick-starting a campaign to save a much-needed family law project in "Operation court rescue," p. 30, and discover why the Cohen brothers share twin passions, "Family ties," p. 27. We checked in with alumni who headed south, and who returned, in "First we take Manhattan..." p. 14.

We are all passionate about what we do, and it's catapulted the Faculty of Law into the select 'best of the best' category in BrainTrack's Top 5 law schools in the world, alongside Yale and Harvard. And here at home, Maclean's magazine ranked us No. 1 once again.

It's another great issue of law school pride. Enjoy it! And Happy Holidays to you and yours!

MAYO MORAN, SJD 1999  
DEAN OF THE FACULTY OF LAW



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Martin Katz, LLB 1984, cut deals across continents to finance *Hotel Rwanda*. But that was the easy part



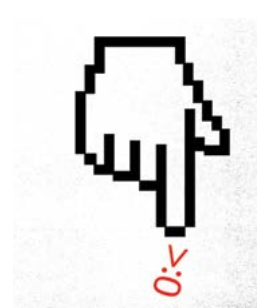
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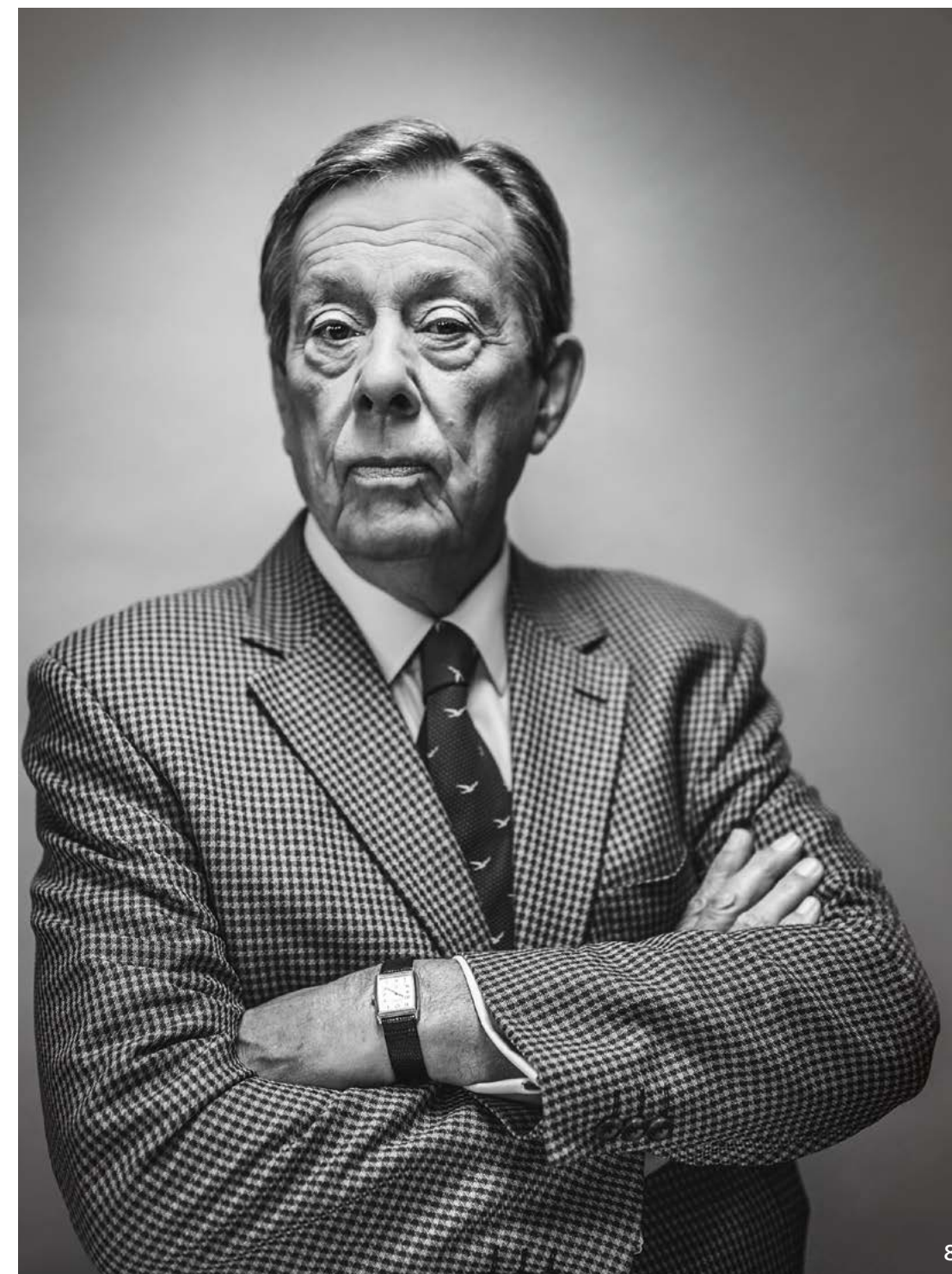
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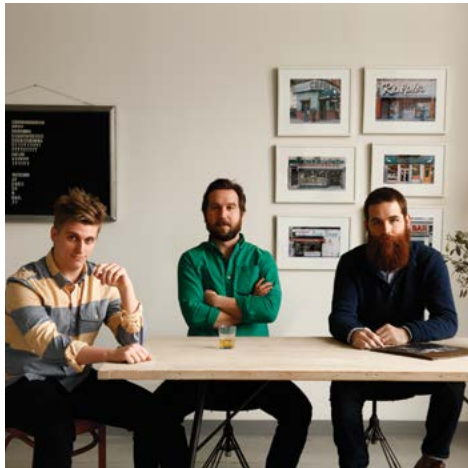
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**OLIVIA STREN,**  
WRITER, "HUNDREDS OF CHILEANS,  
ONE COUP D'ÉTAT ...," P. 8

Olivia Stren, *Nexus*' newest contributor, is a Toronto-based freelance writer. Her work has been published in the *Globe and Mail*, *National Geographic Traveler* and *ELLE US*, among others, and has been nominated for several Canadian National Magazine Awards in the Profile, Short Feature and Arts and Entertainment categories. She also teaches a course in travel writing at the University of Toronto's School of Continuing Studies.



**THE HEADS OF STATE,**  
ILLUSTRATOR, "CYBERBULLYING" P. 22

Jason Kernevech and Dustin Summers have been working together as The Heads of State for more than 10 years, creating award-winning posters, book covers, branding and illustrations for a diverse client list. They lecture frequently about their work and process, and teach graphic design and illustration at Tyler School of Art where they both studied.



**JASON GORDON,**  
PHOTOGRAPHER, "FAMILY TIES," P. 27

Canadian photographer Jason Gordon graduated from the University of Ottawa with a degree in human kinetics. He first picked up a camera when he was living in Japan, and later decided to study photography at Humber College. An award-winning photographer, he's been published in *Now Magazine*, *Exclaim*, and *Kansai Scene*.

## square two

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**HUNDREDS OF CHILEANS, ONE COUP D'ÉTAT, AND A  
CANADIAN ENVOY WHO HELPED PLANES ESCAPE**

**40 YEARS LATER,  
DAVID ADAM,  
LLB 1968,  
RECOUNTS HIS  
STORY**

BY OLIVIA STREN  
PHOTOGRAPHY BY RÉMI THÉRIAULT

“

“I have a friend I play golf with. I won’t identify him except to say that he works for an English-speaking embassy...He thinks your son was executed in the National Stadium on September 19th [1973],” an actor playing a Ford Foundation employee tells Jack Lemmon’s Edmund Horman in *Missing*. The haunting 1982 film is based on the true story of American freelance journalist Charles Horman, who disappeared in the days following the Chilean military coup of 1973. The aforementioned golfing friend is a Canadian diplomat. “They were quoting me,” David Adam tells me over cappuccinos this past September—on the 40th anniversary of the coup—at an Argentinian café in downtown Toronto. Adam, posted to the Canadian embassy in Santiago, Chile, in the early ’70s, recalls the incident that found its way into a Hollywood movie script, saying he’d learned of Horman’s death through a Chilean contact. “I had never met Charles Horman, and by the time I heard about him, he had been killed.”

Adam, who served as the Canadian ambassador to Ecuador (from 1995 to 1998) and to Panama (from 2002 to 2005) is a tall, eminently dignified man with the deep, authoritative voice of a broadcaster manqué and the silver-haired gentility and politesse of another (more elegant) epoch. On the sunny Sunday afternoon of our meeting, Adam is driving in from London, Ontario, on his way back to his home in Ottawa after a golfing weekend. He explains that he’d be delighted to meet me anywhere as he’ll be arriving by “motor car.” Adam coolly recounts his experience of the coup, as if he were still talking about *Missing*, as though the experience were somehow the stuff of Hollywood studios. “It was a riveting experience,” Adam says “I don’t want to appear foolhardy or callous. But I felt like a spectator at some kind of spectacle.” Adam, however, provided far more than an audience to the aftermath of the coup.

Adam grew up in north Toronto, graduated from U of T law school in 1968 and joined the Department of External Affairs the same year. “I would mislead you if I told you that I had a notion of serving my country,” Adam says about what inspired him to join the foreign service. “I didn’t have any great patriotic zeal to further or advance the interests of Canada.” Rather, it was a youthful restlessness and curiosity to see the world. His inaugural post was in the far-flung land of New York City. But after a year and half in Manhattan, Adam was dispatched to New Delhi for a few years. And on September 1st, 1972, Adam landed in the Chilean capital, assuming his post as the first secretary for economic development. Salvador Allende was the elected president (if only with 36 percent of the vote) and the leader of a left-wing bloc, smacking the country in the centre of the Cold

War between Russia and the U.S. Tasked with assisting Canadian companies to buy and sell goods and services, Adam recalls a typical day at the office: a meeting between Thomas Bata (who owned factories and distribution companies in Chile) and the Chilean minister of finance (who was charged with nationalizing foreign companies). “The minister arrived with three Cuban bodyguards armed to the teeth. He sat down and put a gun on the table,” Adam recalls. “I said, ‘Mr. Minister, I don’t think it’s necessary for you to put a gun on the table...later, Mr. Bata and I went for lunch and he said, ‘David, it was very kind of you to intervene. But I assure you that I was not afraid of that man. My father had to negotiate with Adolf Hitler and I had to negotiate with Joseph Stalin.’” Adam summarizes the incident by way of extravagant understatement: “It wasn’t exactly a smooth-running government at the time.”

While the government became increasingly radicalized, the population increasingly divided and the middle classes increasingly dissatisfied, women took to the streets in what the Latin Americans call the ‘March of the Casseroles’—women marching in the city and banging in protest on their saucepans. Amidst this unrest, Adam recalls the most difficult thing to deal with at the time: “There was no food—for anybody. It was a nightmare,” he says. Financially squeezed, factories shorted the market and ceased shipping to supermarkets. In order to eat, you had to have a source. Adam happened to meet somebody in the ministry of agriculture. “I became the roast beef man. Someone else would meet someone who had a farm and would buy two dozen chickens. He’d become the chicken man. Someone else was the toilet paper man,” he says. “This situation was not sustainable. I certainly came to the conclusion that the military was going to come in. What we thought would happen was what always happens. The military would knock on the president’s door in the middle of the night, and the president would come down in his pajamas. They would say, ‘Thank you, Mr. President, for your service. Here is a first class airline ticket for you and your family to Madrid. Here is a cashier’s cheque for \$1 million. Your plane leaves in an hour.’” That did not happen. [Allende had turned down the ‘offer.’]

September 11, 1973: it was a lovely spring day, Adam remembers. Much like September 11th, 2001, the weather was beautiful—the perfection of the climes exaggerating the horror of the ensuing events in its grotesque dissonance. As if even Nature—innocently and clumsily throwing up a pretty backdrop, vulgar in its misplacement—were disarmed. At 8:25 that fresh morning, Adam and his colleagues at the embassy looked out the window and beheld military tanks rolling down the main street. By 12 o’clock, the spring skies were clotted with military helicopters and two rocket-firing British-made aircrafts.

Rifle-wielding soldiers shot at and then charged into the presidential palace. As Adam describes smoke-smeared skies and tank-filled streets, he offers calmly: “I never felt fear. We were out of the line of fire.”

Later that evening, Adam and his colleague, another young Canadian diplomat, Marc Dolgin, were escorted back to their homes in Manquehue, a bougainvillea-draped Santiago suburb nuzzling into the foothills of the Andes. “It was a lovely spring evening, and my wife and I are chatting away, preparing our dinner. And suddenly,” Adam says, pausing theatrically, as if describing the menacingly serene opening scene in a thriller, “a knock at the door.” Two Chileans—one a labour leader—explaining that they were being hunted by the military, were desperately seeking shelter. How they located Adam’s home remains mysterious. (Adam’s theory: that he’d once met the labour leader at one of Santiago’s Bata factories.) “It was an easy decision to let them in,” Adam said. But if it was a straight-forward decision from an emotional (not to mention humane) perspective, it was considerably more complicated from a legal one. Canada had not yet established a status for refugees fleeing political persecution. “Human rights were not on the curriculum at the law school in Toronto in the ’60s,” Adam says, laughing, “but Dolgin and I knew that if people were in danger we should provide them succor and safe haven.” By the end of that week, Adam and his wife were harboring eight people; Dolgin and his family were housing seven. Neither knew if their guests would be staying 10 more minutes or 10 more years.

With Adam and Dolgin realizing that their homes didn’t qualify under international law as official government property, and fearing for the safety of their now-17 charges, they resolved to take them to a place where they believed they’d have a guaranteed safe haven: Canadian ambassador Andrew Ross’ residence. (Ross and his wife were in Buenos Aires at the time, purchasing a car.) “We basically moved them, one by one in the back of the car, each covered by a blanket,” he says, “but we were nervous. We didn’t know how Ross’ wife would take the fact that there were more than a dozen people in her house and they might be there for years,” said Adam. If the ambassador and his wife took the news with appropriate understanding, Ottawa was less supportive. “‘You had no authority,’ they said,” Adam recalls. “Well! Tell us something we didn’t know already!” Under existing Canadian policy, political asylum didn’t exist. Canadians could only legally provide refuge to people who were under so-called hot pursuit. “If people were being chased down the street with soldiers firing at them, only then could we let them in. That was absurd. Some blindfolded bureaucrat came up with that notion. So to hell with it! It was stupid,” he said.

“People will come up to me and say, ‘You risked your career’. I didn’t think it was such a big deal. We did what we had to do at the time.”

As news of the atrocities and bloodshed unfolding at the National Stadium made its way to the Canadian public, the federal government (under pressure from Canada’s NDP) softened its stance and issued orders to Adam and his colleagues to accept more refugees—if they were in deadly danger. With about 50 people knocking on the embassy’s door every day, Adam was charged with having to establish the gravity of the newcomers’ situation. “You’d have a 45-minute conversation with someone who would tell you all the reasons why they’re going to be tortured or assassinated, and you’d have to say, ‘Thank you very much for sharing the litany of evils that is about to befall you, but the answer is no. We’re going to send you into the maelstrom, and you and your wife and children may be dead before you reach the corner.’ So, we said, no to Ottawa. Enough is enough.” Given Adam (and his colleagues’) position, Ottawa dispatched a team to assess the situation. And by November, 200 Chileans—and Brazilians, Argentinians, Ugandans, all escaping the right-wing governments in their own countries—were holed up in an office with two bathrooms that normally accommodated 20 employees. “For two months we fed them and housed them,” Adam said “and even hosted a Christmas dinner, regardless of their faith. They were happy because we brought in turkeys for them.” Soon afterwards, they were all granted safe passage to Canada.

At the end of *Missing*, Charles Horman’s body is found buried in a wall. Although nobody knows exactly what happened, the truth can’t (tragically) be far off. What we know is Horman was among the estimated 1200 who “disappeared,” and among the estimated 40,000 people who were killed, tortured or imprisoned under Augusto Pinochet’s bloody dictatorship. It’s also estimated that Canada welcomed approximately 7000 Chilean and Latin American refugees after the coup in part by grace of Adam who decided one night 40 years ago to harbour and feed a couple of strangers. “I was unable to calculate the consequences of what might happen by letting them in,” says Adam, “but they knocked on the door and said ‘The military is going to kill us.’ So I said, ‘Come on in, we’ll give you dinner.’” Adam’s pragmatism and old-fashioned modesty prevents him from casting himself as hero, or from any grandiose acknowledgement of how that decision kindled a change in Canadian policy. “Circumstances dictate policy, as much as policy dictates circumstances,” Adam says. “Out of an acorn a mighty oak did grow.” 🌳





## Asper Centre's fifth anniversary symposium examines its impact and charts its future

BY VITO CUPOLI  
ILLUSTRATION BY TARA HARDY

“Constitutional rights seem like an obscure subject for most Canadians until their own rights are adversely affected,” said alumnus David Asper, LLM 2007. Five years later, on November 8, 2013, a clear picture emerged of the influence of the David Asper Centre for Constitutional Rights on the definition of rights in Canada.

This influence, the key point of discussion at the Centre's fifth anniversary symposium, has been felt in court and beyond, in a range of cases which reflect the issues of our times.

The Centre's commitment to the pursuit of rights contained in the Charter of Rights and Freedoms has led it through an eclectic mix of cases involving polygamy, strip searches and the repatriation of Omar Khadr, among other topics.

“We have established a unique legal clinic that brings together students, faculty and members of the bar to work on significant constitutional cases and advocacy projects,” said Cheryl Milne, executive director of the Asper Centre.

Milne said it is a priority to select cases which will enrich the education of constitutional law students and the Charter rights of Canadians. “Advocacy, education and research complement each other,” stressed Milne, in a Centre “combining theory and practice.”

“It's hands-on work,” said first-year law student Ada Keon, as she described her involvement with the privacy law working group at the Centre's legal clinic.

The symposium, held in the chapel at Victoria College, was divided into two panel discussions. The first dealt with how the Centre's past legal interventions will influence future litigation, as the Charter enters its fourth decade at the centre of Canadian law.

For instance, juries are a central feature of our legal system. After a set of cases argued by the Asper Centre, jurors are now guaranteed their privacy. In addition, background investigations of jurors have also been reined in.

Panellist Joseph Arvay QC, the Centre's first Constitutional Litigator in Residence, discussed two interventions at the Supreme Court dealing with legal precedents and standing when litigating Charter cases.

The issue of precedent was found in *Canada v. Bedford*, a challenge to prostitution laws. Arvay and Cheryl Milne argued this issue of *stare decisis*, the impact of previously decided cases on lower court rulings when there is a material change in the social or legislative facts supporting the challenge.

While the Court's decision is still pending, Arvay argued this issue is fundamental to the Charter's status as a living document, able to protect rights in a changing social and legal environment.

In another case, *AG Canada v. Downtown Eastside Sex Workers United Against Violence*, the Centre strengthened its own hand and those of other third party litigants by successfully arguing that one need not have been personally injured by a decision in order to

receive standing in court. The court responded by crafting a flexible standard for standing, the first change in this area of law in 20 years. This development effectively broadens the scope of Canada's ongoing constitutional discussions.

The symposium's second panel dealt with cases from one of the Centre's particular interests, remedies for violated Charter rights.

In *Ward v. Vancouver*, a case arising from an illegal strip-search of a man suspected of preparing to throw a pie at then-Prime Minister Jean Chretien, the Asper Centre's intervention produced a Supreme Court decision that monetary damages could be ordered for Charter violations. The \$5,000 award has since been applied in other cases for damages.

This pursuit of remedies for Charter violations led to the Centre intervening for Omar Khadr, whose case is still winding through the courts as he sits in maximum security at a prison near Edmonton.

When Khadr was held at Guantanamo Bay, US authorities permitted Canadian investigators to interrogate him owing to his birth in Canada. In spite of his citizenship, the Government of Canada violated his Charter rights in the process of questioning, then refused to request Khadr's repatriation to Canada even though the Americans were urging Ottawa to file an application.

In its 2010 decision, the Court found Khadr's rights had indeed been violated but it declined to order the government to bring him home, citing its exclusive responsibilities in foreign affairs. It indicated a willingness to act, however, if the government did not move on its own.

While that was a disappointment, John Norris, who worked on Khadr's legal issues for several years, said the Court used this case to articulate a vital principle for protecting Charter rights. “The Court affirmed that it has a role to play in defining the constitutional limits to the exercise of executive government discretion.”

Keynote speaker Nathalie Des Rosiers, dean of the University of Ottawa Faculty of Law and former general counsel to the Canadian Civil Liberties Association, highlighted how the Asper Centre might position itself in the next five years.

“It must engage forcefully in reframing debate at times, ensuring that legal categories are not narrow but framed in a way that empowers democracy to work at its best. And I think that's the way the Centre should see itself; how it can be an agent for good democratic government for Canada.” ↩



BY ALEC SCOTT, LLB 1994  
PHOTOGRAPHY BY BLAISE HAYWARD, SVEN BOECKER,  
GERARD YUNKER & SOFIA KIRK

# First we take Manhattan— then we take Toronto, Calgary and Vancouver

For about two decades now, a few graduates of the Faculty of Law have taken jobs at major New York law firms each year. The huge firms are staffed by the smart and motivated; the salaries tend to be high, though, of course, it's a superlatively expensive city; and the scope of legal work on offer in one of the world's biggest financial centres is usually broad and international in scope. Some stay there, many come back to Canada. For all, the demanding New York City experience helps them clarify what they really want in life.





## THESE POWERHOUSE FIRMS BEGAN TO HIRE FROM THE FACULTY

with some regularity after a few individuals—a handful of outliers—landed jobs down there in the ’80s and impressed their colleagues and the partners. They worked (and billed) the many hours expected; they delivered the desired results. Dress them at Saks Fifth Avenue or Brooks Brothers, and you almost wouldn’t know, but for the occasional “abowt,” that they weren’t born and bred south of the 49th, that they weren’t the product of the usual-suspect top tier American schools.

After a certain time at a firm, any firm, some soul searching usually comes—if I’m keeping up with my contemporaries, getting good performance reviews, do I want to go for partner, really go for it? Is the culture a fit for me, the work adequately engaging? A supplementary question presents itself here: Is New York—this pace, this type of work, the square footage I can afford here—is it all really for me? Some choose to stay, but others opt to join firms in Canada’s growing, increasingly internationally oriented cities.

I interviewed a few Faculty of Law graduates who decided to take job offers in New York—and heard how they got there—what, briefly, they found. But then I also spoke to some who, having been there, done that, decided to return to Canada, a bit older, perhaps wiser.

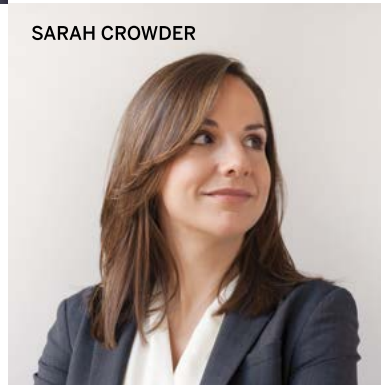
The view from a boardroom in an office tower at the tip of Manhattan: in the harbour, tugs tow barges towards the East River, a Circle Line cruiser pauses to give on-board tourists a photo-worthy view, and the plump Staten Island Ferry does one of its many daily crossings. Someone clears his throat behind me: Don Crawshaw, a partner with nearly three decades of experience at Sullivan & Cromwell LLP. This is one of several boardrooms on a floor of them at the Wall Street firm.

“That’s the helicopter pad where Obama sometimes lands,” he says, pointing at a tarmac-covered dock protruding into the water. On the wall is a print of Manhattan when it was covered in forests, with some low-slung brick buildings at the edges.

Soft-spoken, wearing a suit with barely perceptible pinstripes, Crawshaw was one of the first University of Toronto law graduates to come down to New York, in the 1980s. In his day—he graduated with the Gold Medal in 1982—professors often encouraged students who’d excelled at the Faculty of Law to do an LLM abroad. Court clerkships were not the thing then, and the Hamilton native came to the firm after doing well at Columbia University.



DON CRAWSHAW



SARAH CROWDER

“The firm had some history with Canada. Founding partner William Nelson Cromwell worked on the organization of the International Nickel Company in 1902, and the firm represented Inco for more than 100 years, helping to move its head office from New Jersey to Canada. But they probably didn’t realize how tough it was going to be to sponsor me to get a green card. They had to advertise my position, something they’d never done before ... Nowadays, they’re all old hands at bringing students in from Canada—and around the world.”

According to Crawshaw, the best you could say of the nearly bankrupt, crime-ridden New York of that period was that it had a “gritty glamour.” “Maybe people came for a weekend, but no one in their right mind would want to live here. A partner at a Toronto firm was trying to convince me to work in Toronto, and one of his big selling points was that I could live in Toronto, that I wouldn’t have to live in a place like New York.”

But New York’s cultural riches and the opportunity to join one of the world’s top securities shops drew Crawshaw. “What I love is new product development, and we’ve been involved in coming up with new legal tools to meet the market’s changing needs.” In his quiet, utterly understated way, he’s something of an advertisement for this life’s possibilities. Not only is he among the world’s top securities lawyers, but he’s just completed an MA at a seminary with a major in biblical studies, and is an opera fan who periodically attends productions of Wagner’s *Ring* around the world. A baritone, Crawshaw has sung in a number of choral societies and fondly recalls singing the role of the king of Bali Hai in “South Pacific Rim,” a musical (premiered at a firm holiday party) about the firm’s Australasian strategy.

I interview three young members of his firm’s team. Crawshaw has been responsible for bringing a generation of law students down here.

Montrealer Sarah Crowder, JD 2010, specializes in white-collar criminal defense and investigations. She got her first taste of litigation at Downtown Legal Services, where she worked full-time in the summer after her first year at the Faculty. “As students, under a lawyer’s supervision, we could represent people on lesser criminal charges, ones where the clients faced a very low risk of jail time. But a client assigned to me had other charges pending, and did end up spending time in jail. Handling situations where you feel out of your depth is a key lawyer skill, right?”

She landed the New York job after clerking for Mr. Justice Morris Fish at the Supreme Court of Canada, and says she particularly enjoys the investigations work. “It’s not a practice area I knew existed at law school and it can involve piecing together a story like a private investigator, through interviews and reviewing emails. It’s also very international in nature, which presents some interesting legal and tactical issues.” The hours tend to be long, but she begins most days briefly enjoying the view of the Empire State Building that greets her when she leaves her West Chelsea apartment. All in all, her mother isn’t surprised she ended up in New York. “I don’t remember this but she says when I came back from a high-school field trip, I said, ‘That city is made for me.’”

Mergers and acquisitions lawyer Julian Wright, JD 2008, is another former Supreme Court clerk. He assisted Madam Justice Rosalie Abella, JD 1970. The Ottawa native, a diplomat’s son who grew up in a number of European countries, says one of his work highlights to date has been junioring on the much-reported-on corporate rearrangement of film house The Weinstein Company. “Those core courses at law school remain helpful,” he says. “There’s a steep learning curve for everyone starting to practice. But we are as well prepared as anyone else.”

A fresh addition to the U of T cadre at the firm, Amma Anaman, Class of 2012, arrived here that fall, just in time for Hurricane Sandy. “I hadn’t laid in supplies, so it was peanut butter and rice cakes for me.” She lives not far from the office, in lower Manhattan. When the power remained off, she decided to fly back to her native Saskatchewan to work remotely. A joint JD/MBA graduate of U of T, she’s been interested in the stock market since she was a little girl—“my dentist father bought me and my brother Disney stock and we followed it”—and delights in seeing Wall Street’s inner workings, trying to master the legal aspects of the deals that have been hived off to her by more senior associates.

The big New York firms have a strong commitment to pro bono work, and Anaman is one of the many U of T grads down here to speak of the



JULIAN WRIGHT



CLAIRE HUNTER

for-free representation her firm encourages her to do. “I thought it might just be window-dressing but it isn’t. It really isn’t.” Crowder is representing a claimant in a political asylum case, while Anaman, just got to use her knowledge of the law of piracy (absorbed while writing a paper at U of T) to help a Washington-based NGO pull together a legally tight position paper for a UN working group on the subject. “I certainly never thought I’d use that again.”

Claire Hunter, Class of 2003, is another former Supreme Court clerk, for Mr. Justice Frank Iacobucci, a former Faculty of Law dean. She also practiced litigation and criminal defense at Sullivan & Cromwell. The first time she ever got on her feet in court was in a pro bono case, she recalls, where a West African was seeking asylum, fearing genital mutilation if she were sent back to her home country. After five and a half years, Hunter decided to return to her hometown of Vancouver, to join Hunter Litigation Chambers, a 22-lawyer shop. (Her father, John Hunter Q.C., is the Hunter on the letterhead, and her mother, Rebecca Hunter, is a senior lawyer at the Department of Justice. Sidebar: both were members of the storied Class of 1975, and met while studying at law school.)

The daughter compares her New York practice with her current one: “It’s many of the same legal issues, but a different mix of clients here.” She mentions, by way of examples, recent appearances in an arbitration for a mining company and representing the provincial Chicken Marketing Board in administration proceedings. “At the firm, it’s nice knowing who’s in the office, who’s not, which you could never know at a big firm like S & C. And you have to be on when you’re on here, but the office isn’t still hopping by the middle of the evening.” But she admits to missing, every so often, the ability to finish a rough piece of work late at night, leave it for all-night support staff to polish up, and find a nearly-there version awaiting her the next day. She’s kept up her commitment to pro bono work: in 2013 she received an award from BC’s Access Pro Bono for her work on cases involving parental rights, housing and benefits for the disabled.

It can be difficult to pinpoint the reasons why we make big decisions, but she gamely tries: “You know, I was happy working in New York, but when I reached the decision point, I’d just been back home on a visit. You think: ‘I like my friends and family, why exactly am I not there?’ Also, I was surprised to find it mattered more than I thought it would to live in Canada.”





CASSANDRA FLORIO

On a break from my undergrad, I worked at Paul, Weiss, Rifkind, Wharton & Garrison LLP, interning on a big insider-trading case, and so it’s something of a sentimental journey to visit Cassandra Florio, JD 2010, in the mid-town firm’s offices. I tell her I remember once walking by partner John McEnroe Sr.’s office, and seeing “You-Cannot-Be-Serious” himself and his then-wife Tatum O’Neal sitting shoeless on his floor. “He still has an office, and comes in fairly often.”

Florio, a corporate associate, says she ended up down here in part because a fellow Vancouver native, who also went to McGill for undergrad and to U of T for law, one year ahead of her, came down here. “Everyone jokes he’s me plus one, and his office was next to mine—until he left to join Amazon.”

When we meet, Florio is living in nearby Hell’s Kitchen, formerly as hellacious as its name suggests, gentrified relatively recently. “You know there are big rewards here but you have to be prepared for the work load, the sacrifices. If I’m out of here by eight or 10 at night that’s good, but often it’s later. Though these past few months have been good. I’ve had most of my weekends.”

A month after our initial interview, Florio accepted a job at the Vancouver office of Borden Ladner Gervais LLP, returning, like Hunter, to her picturesque home city. “It was a tough call,” she says. “I was not in a rush to leave Paul, Weiss. The work was interesting. But I was aware that the window of my portability was closing.” An unsentimental, in-the-present sort, she’s not casting a lot of backward glances at the Big Apple. “I don’t get misty-eyed about it. The pace was pretty incredible—it’s like dog years, every year of experience there, you should multiply it. Your limits are tested, and you realize that you will have that capacity to turn it on if you need it.”

Corporate lawyer James McClary also worked at Paul, Weiss, in its New York and London



JAMES MCCLARY



MIRA DEWJI

offices, and recently moved back, with his family, to his native Calgary to join Bennett Jones. As with Hunter, he has a new type of client to get used to, the various players in the oil patch, but for the most part, merging and reorganizing companies is similar to what he did at his New York firm. A strong violinist and singer with a music degree, born into an artsy family, McClary says his parents were supportive of his decision to go to law school, but a bit surprised. “You need this fire to make it in music, and I felt I didn’t have it,” he says. “But from the moment I started at law school, it felt natural, much more interesting to me, more engaging than I thought.”

He loved the work at Paul, Weiss, but found it consuming. “I had to skip our first anniversary dinner; we shared a glass of wine on the roof at one a.m. And that wasn’t that unusual. When we moved back to New York from London, I got a call in the airport. They needed me to come in the next day, rather than helping find and settle my family in a place.”

During the stint in England, he realized, if they stayed there, his son would grow up playing sports that he couldn’t teach him—cricket and rugby. On a ski trip back near Calgary, he and his wife made the decision. “But I’ll never forget coming for my first interview in New York, walking through the hall in Grand Central Station, the huge skyscrapers ....”

The few days I spend in New York, fierce rains buffet the city. I look progressively more bedraggled as I shuttle from one meeting to the next. There’s some rainwater dripping down my face, and Mira Dewji, Class of 2009, kindly offers me a napkin to wipe it off, in a cafe at the base of her firm’s building. The corporate associate’s firm, Latham & Watkins, is located in a building commonly known as the Lipstick Building for its rounded edges, pink granite cladding, and taper towards the top. She confirms that a healthy work ethic is necessary to make it here. The Nolita (North of Little Italy) resident is a little less bullish on the city per se. “It can be a battle getting to and from work, and that sense of a social fabric like in Canada is not here.” She says as junior associate, “You have to learn how to find your balance, to learn how to sometimes say ‘No, I’m maxed out right now.’ Otherwise you’ll be massacred.”

Another day, another boardroom, this one covered in photos by Patrick McMullan of the figures who bestrode New York in the

gritty, glamorous ’80s: the actor Christopher Walken, then young and rakish, and spike-haired pop artist Andy Warhol. “They were probably shot at Elaine’s or Studio 54,” says Stuart Nayman, LLB 1991, a partner in Hand Baldachin & Amburgey LLP. “One of our partners knows McMullan, and the photographer’s kindly loaned us some prints.” Nayman, a Montrealer, and his law partner Alan Baldachin, LLB 1993, both came down here to work at the old, storied Shearman & Sterling LLP firm in the ’90s, and eventually decided boutique was more their speed.

“The great pleasure for me has generally been in helping small companies reach the next level,” says Nayman, who has helped put together IPOs for a long list of biotech and tech start-ups over his approximately two decades in practicing corporate law. “In a smaller firm, you can do this sort of work with greater efficiency.” In the past, Nayman’s work required frequent travel—to Japan to pinpoint client Toyota’s needs, and to Kazakhstan (“Before anyone knew where Kazakhstan was”) to help set up an oil-producing joint venture (“They’re just starting to pump from the Caspian Sea now”). On top of the scope of the work, he likes two things about New York: “My wife is from here—and Bruce Springsteen plays way more concerts in this area whenever he does a tour.”

Nayman has watched the relationship between U of T and the big firms down here play out for some time, and turns reflective towards the end of our interview. “There was some concern at one point about U of T students coming down here—the brain drain ... It never became the case that all the top students ended up down here, just a few every year. And many of them go back, with that experience under their belts. For Canada to have some people here, for Canadian companies to be able to find lawyers down here who speak Canadian, that’s not a negative.” He laughs at the inadvertent double negative.

“Some days, you’re overwhelmed by the size of it,” he says, trying to sum up his New York experience. “But others, you feel somehow you’ve hit this hugely sweet spot. If you can keep your perspective ... it can be a good place.”

Kashif Zaman is a transactional lawyer at Osler, Hoskin & Harcourt LLP, who began his post-law school career at Sullivan & Cromwell. “The first person I saw at the firm was Don Crawshaw,” he remembers. The experience in New York was what he expected: “The intensity, day after day, month after month. But three years in, I thought I wanted to find more balance. Also,

the work was driving you towards specialization in New York.” He explains that certain lawyers develop a niche in, say, high yield bond offerings, and that becomes their life. “It’s a deep market, there can be enough work for someone with a narrow expertise. Once you make that move, you’re only going to do public M&A for the rest of your career, nothing else.”

He wanted a mix of transactional work and that’s what he gets to do now, in one of Bay Street’s top corporate law shops. “You’re always learning in broad strokes, and when the next transaction is strikingly different from the last, it is a break of sorts.”

Since Zaman has worked in New York, students deciding whether to head there or stay in Toronto often ask him during the firm’s recruitment drives about the differences between the two cities. He advises them that the New York firms are more highly leveraged, with a ratio of about 3.5 associates to every partner, as opposed to one to one, as is the case in many Toronto firms. “It’s a volume business down there, you churn it out, and there’s something of a revolving door at the firms—I started with 100 other associates, and 50 of them had left by the time I did.” But still, when he enumerates what he liked about the work there’s an obvious adrenaline in his voice. “But I advise them if they’re leaning that way to try it for a couple of years. You need to see it, experience it, to learn from it, the sink-or-swim mentality, the high of the big transactions, the complexity of them. You get as much responsibility as you can take.”

Does he miss it? “Honestly, no, New York is great at marketing itself, and there is much to the hype. But the life I get here, with my family, that balance I mentioned—Toronto is more modest about itself, but it really has so much to offer, especially these days. In the end, it’s more what I, what we wanted.”



KASHIF ZAMAN





# Movie Magician

Martin Katz, LLB 1984, cut deals across continents to finance *Hotel Rwanda*. But that was the easy part

BY CHRIS GRAHAM, JD 2007  
ILLUSTRATION BY MATHILDE AUBIER

“There are two major challenges to making a film,” says Martin Katz (pronounced “KAY-tz”), from the front of a theatre at the TIFF Bell Lightbox in downtown Toronto. The theatre’s seats are filled with students, mostly film, some law, who’ve come to hear Katz talk about the international financing package he negotiated for the acclaimed film *Hotel Rwanda*, which debuted in 2004. The Oct. 4<sup>th</sup> event is part of the TIFF’s Higher Learning series and co-presented by the Faculty’s Centre for Innovation Law and Policy.

Katz is an engaging mix of ebullience and charm. He’s wearing yellow leather shoes and jeans with rolled cuffs. He’s healthily tanned despite the day’s grim weather, having just returned from Los Angeles, where he was checking-in on his latest project (a film called *Maps to the Stars*, starring Julianne Moore and Mia Wasikowska.) He looks, in other words, exactly as you’d imagine a successful film producer would look, and he’s about to tell us how films are kind of miraculous, finance-wise, at least.



“The first challenge is that there is not enough money in the world to make a film.” Katz beams, film students sink lower in their seats. “The global pre-sale rights to a film’s exploitation,” Katz explains, “are nowhere near enough to cover the cost of production.”

That means the film business makes products even it doesn’t think will be profitable, which makes Katz a kind of magician: he makes films appear where there should be nothing.

“Because you can’t do a film using foreign and domestic pre-sales, you need something else—what I’ve taken to calling ‘The X-Factor.’”

Katz is the founder of Prospero Pictures, a Toronto-based production company. In addition to *Hotel Rwanda*, which we’ll watch after his talk, Katz has produced numerous award-winning feature films, including three with Canadian director David Cronenberg (*Spider* (2002), *A Dangerous Method* (2011) and *Cosmopolis* (2012)). Katz graduated from the Faculty of Law in 1984, using his legal training to specialize in the kind of international co-production deals that he pioneered with *Hotel Rwanda*.

Otherwise known as soft money, Katz’s X-Factor typically comprises a mix of public and private investment specifically designed to support cultural products. The best-known Canadian example would be Telefilm, but for *Hotel Rwanda*—a \$20-million film about the Rwandan genocide in 1994 and the efforts of hotelier Paul Rusesabagina to shelter Tutsi refugees from Hutu militias—the cultural connections that Katz needed were wholly international. After selling the U.S. rights for \$3-million, Katz went looking for \$17-million worth of foreign cultural interest.

Katz first pitched the film to South Africa’s Industrial Development Corporation, which was very enthusiastic: not only was the story of supreme national interest, the entire film would be shot on location in Kigali, Rwanda and Johannesburg, South Africa. Katz then leveraged the film’s British-born writer and director, Terrence George, to secure a group of UK-based investors.

Now a fun legal problem: it turns out there are dozens of international treaties that facilitate co-production of cultural media: Canada alone is party to 51, says Katz. The treaties make possible precisely the international financing Katz was trying to assemble for *Hotel Rwanda*—but, at the time, there was no treaty between the U.K. and South Africa.

There was, however, a treaty connecting the U.K. and South Africa, individually, to Italy. Katz reached out to an Italian investor who was interested but wanted to cast an Italian actor to cement the cultural touchstone. The suggestion was: “How about a priest?” So Katz got Terry George to write six pages into the script featuring an Italian priest (played by Roberto Citran, on screen for roughly 30 seconds).

Katz smiles wryly: “We could now hang our hat on this cultural link between the three countries.”

But investment is just the first challenge to making a film. The second is that a film’s investors don’t pay until the film is delivered. The actual production—actors, crew, sets, cameras, editing—is paid with loans against this eventual payment and secured against the film’s copyright. This interim financing is provided via an Interparty Agreement, or IPA, which, for *Hotel Rwanda*, involved parties in the U.S., U.K., Italy, and South Africa.

“Thus began a long process of two or three problems per day, all literally insurmountable, and trying to get them resolved.” Katz looks tired just saying this. “Then we would start the process again the next day.”

A few weeks before shooting began, Katz and his partner flew to the U.K. to negotiate the IPA. “We thought it would take three days, there would be a dinner and we’d all go home.” Instead, the negotiations turned into “a sixteen-day hostage taking,” with Katz and his partner on the phone from 7AM to midnight (covering all four time zones) trying to resolve conflicts, all the while knowing sets were being built in South Africa with money not yet secured.

“If we didn’t finalize the IPA we’d all be bankrupt, basically,” says Katz. “And I’d have to pay my own hotel bill.”

At one point during the negotiations, a South African premier intervened—deep behind the scenes—to secure the IDC’s financing. Katz recalls his contact’s cagey assurance: “I can’t tell you why, but don’t worry, everything will be OK.”

The biggest challenge, in true Hollywood fashion, came right at the end: the weekend before shooting the Italian investors balked. “Their lawyer went home on Friday, refused to talk, and we were supposed to start shooting on Monday.”

In order to continue, the Italians demanded renegotiation of the entire deal, starting at noon on Sunday. Katz holds up his hands: “A binder of contracts nine inches thick.”

Taking only 45-minutes for dinner and a 17-minute morning coffee break, the agreements were finalized just after 1PM on Monday afternoon. Almost 26 hours after the deal looked scuttled, Katz finally called South Africa:

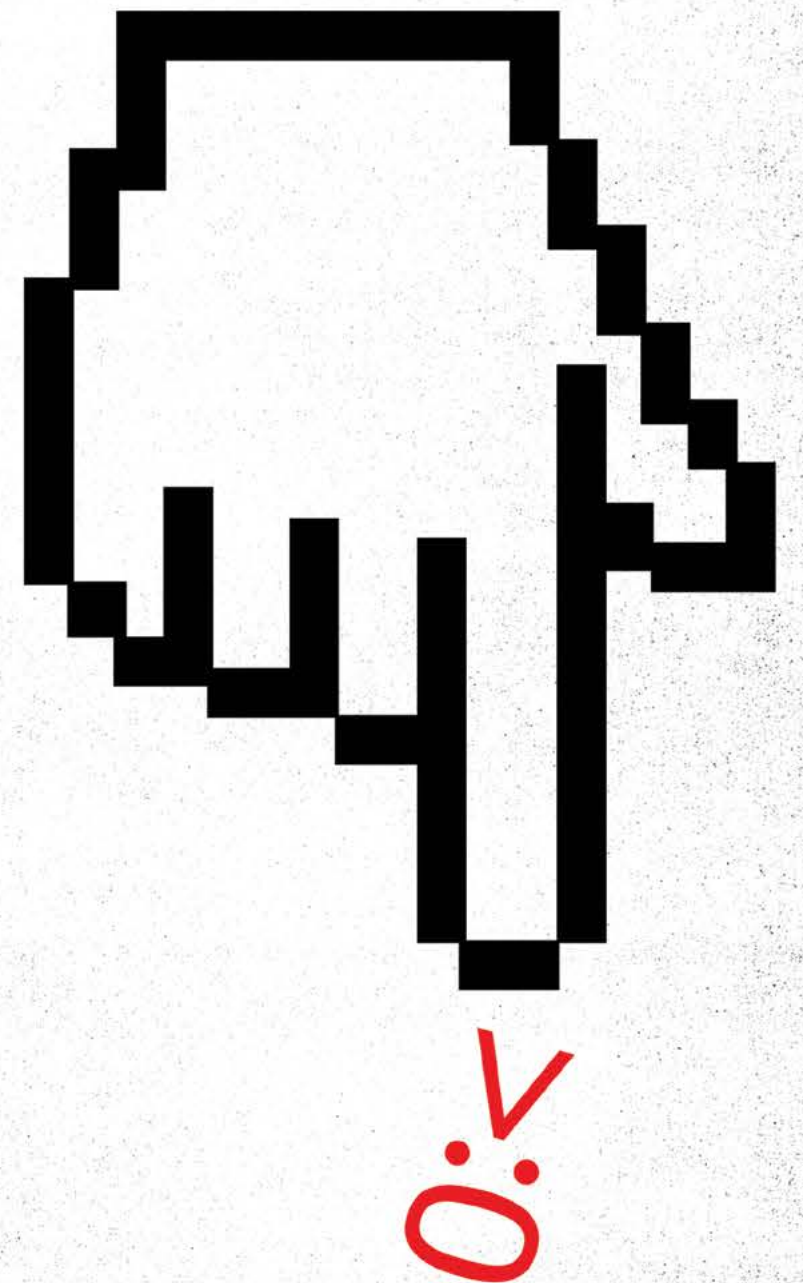
“OK,” he said. “Start shooting.”




# Crusade against ~~cyberbullying:~~

How to stand up to a  
21<sup>st</sup>-century problem  
when society  
has yet to catch up

BY KAREN GROSS  
ILLUSTRATION BY THE HEADS OF STATE







Even now, three years later, Amy Dyson’s voice cracks when she recounts her daughter’s victimization online at the hands of a couple of girls who studied ballet with her in an intensive after-school program. The serious, shy Grade 9 student knew a lot more about Bach than bullies at the time, and had no interest in social networking. Yet the teen was forced to learn about bullies and Facebook very quickly, after an athletic injury caused her to miss several ballet practices.

“You can be cyberbullied when you’re not even part of the cyber-world,” says Dyson, still seemingly astonished by what happened to her then-14-year-old child. The girl’s alleged friends had gone online and maliciously accused her of faking her injuries. But the meanness didn’t end there. “She was sitting at lunch at school, and her friend showed her this Facebook page and two other ballerinas were saying really nasty things about her. One of them said, ‘What a bitch,’ and the other one said, ‘I want to rip her head off’.”

If that seems over-the-top or unbelievable to you, it did to the Dysons as well. They had their daughter take a screen shot of the offensive conversation, before the girls could delete it. They approached the perpetrators’ parents and the ballet school. The girls were forced to apologize and the ballet teachers admonished the class. But that was all. “In retrospect, the ballet school was the real problem,” Dyson says. “They fostered a really negative atmosphere and they didn’t really know how to react.”

It’s not surprising the owners of a small ballet school in San Diego did not know how to react to this newfangled and sinister form of an age-old problem, given that legislators, educators, social policy and youth advocacy experts across North America have been struggling with it for years, and have yet to effectively tame the beast in any kind of comprehensive way. Spooked by the tragic suicides of Canadian teenagers, including Amanda Todd, Rehtaeh Parsons, Jenna Bowers-Bryanton and Jamie Hubley, adults are becoming increasingly anxious. Their job is to protect children and keep them safe, but they seem stumped in the face of this pervasive, insidious threat.

“The problem with this new kind of technology, these online threats and intimidations, is that it follows the students home,” says Eric Roher, adjunct professor at the Faculty of Law and partner at Borden Ladner Gervais LLP, where he serves as national leader of the firm’s education focus group.

**“Social media is the oxygen that students breathe. They’re on Facebook all the time. They’re constantly tweeting and texting.”**

It’s the stuff that’s being tweeted and texted, Instagrammed and instant-messaged that can and often does make its targets miserable. A 2010 study led by Faye Mishna, professor and dean of the Factor-Inwentash Faculty of Social Work at the University of Toronto, found that almost 50 per cent of students surveyed

reported they had been victims of cyberbullying, though many had not told anyone about it. The same study revealed that more than a third of those surveyed said they had bullied others online.

But the line between a joke gone too far, and intentionally harmful harassment or threatening behaviour, can be unclear, at least in a strictly legal sense. And when an incident becomes sexualized, it moves into an entirely different realm. In the Rehtaeh Parsons case, a photo of her allegedly being gang-raped when she was 15 was circulated on the Internet. Her mother says that after months of being bullied and humiliated online, Parsons attempted suicide and was taken off life support several days later. Police said there wasn’t enough evidence to charge anyone with sexual assault, but more than a year later they charged two young men with distributing child pornography.

But what happens when, for example, intimate photos that two young lovers may have shared consensually in happier times go viral after they break up? Should someone be charged with a criminal offence? Not realistic, argues Brenda Cossman, LLB 1986, law professor and director of U of T’s Bonham Centre for Sexual Diversity Studies.

“I don’t want to say it’s never appropriate,” she says.

**“But for the really common scenarios of sexualized cyberbullying, child pornography laws are not the way to go at this. It’s like trying to attack a really complex problem by shooting a tank at it.”**

Andrea Slane, JD 2003, agrees there are no easy answers for such weighty issues and says, like the Internet itself, the laws pertaining to it are still works in progress. An associate professor at the University of Ontario Institute of Technology in Oshawa, Slane’s areas of research include privacy and sexual harm, as well as sexualized cyberbullying. The distribution of sexual images without consent violates personal privacy in addition to potentially violating child pornography laws. “People who gain access to images that the subject did not intend them to see, should ask themselves, ‘What does this image actually mean to me? What does it mean to the person in the picture?’,” she says.

But under increasing pressure from the public and provincial legislators, and faced with what seems like an onslaught of cyberbullying stories with awful outcomes, the Harper government is taking unprecedented legal steps. In November, it introduced cyberbullying legislation that would, among other things, ban the non-consensual distribution of intimate images, commonly known as revenge porn. Several provinces, including Ontario, Quebec, Alberta and New Brunswick have already amended their Education Acts to target various forms of online harassment. And in the wake of Rehtaeh Parsons’ death in April 2013, Nova Scotia adopted the Cyber-Safety Act, which defines cyberbullying as “any electronic communication through the use

of technology . . . that is intended or ought reasonably be expected to cause fear or intimidation, humiliation, distress or other damage to another person’s health, emotional well-being, self-esteem or reputation and includes assisting or encouraging such communication in any way.”

Abby Deshman, JD 2008, director of the public safety program at the Canadian Civil Liberties Association, thinks it’s likely that Nova Scotia’s law will be challenged because aspects of it are very vulnerable to being struck down as unconstitutional. “Basically, its definition could catch just about any negative online speech and it’s not limited to students,” she argues. “An editorial that’s written in a newspaper and published online, political cartoons that could reasonably expect to cause damage to one’s self-esteem—they fall within the definition.”

Deshman is also critical of some other aspects of the law, which allow alleged victims to sue perpetrators and holds parents liable if the perpetrator is under the age of 18. The legislation can also force perpetrators, no matter what their age, to identify themselves publicly, while the names of the accusers may not be published. “I don’t necessarily have a problem with publication bans for the accuser,” she says. “It’s the assumption built in that one person definitely needs protection, and the other needs public shaming and punishment, when really often these are both young people who need protection.”

That concern that all children need compassion and protection, including the alleged bullies, is shared by many child and youth advocacy experts. Rosemary McCarney, president and CEO of Plan Canada, points out while other countries have national action strategies on violence against children, Canada does not. “It worries me that we think of cyberbullying as a unique category of violence against children,” she says. “We’re missing the bigger picture.”

Plan Canada’s latest report, *A Girl’s Right to Learn without Fear*, produced in partnership with the Faculty of Law’s International Human Rights Program, looked at school-related gender-based violence around the world. The report uncovered some troubling statistics. Among them, nearly a quarter of Canadian girls and at least 15 per cent of boys have experienced sexual violence before they reach 16. And on a list of 35 comparable countries, the World Health Organization ranks Canada 27th—among the worst—for its bullying victimization rates among 13-year-olds. Separately, a national survey found 28 per cent of LGBTQ kids have been victims of cyberbullying and two thirds say they feel unsafe at school. And this information, McCarney argues, is not nearly comprehensive enough.

“One of the things holding us back in Canada is the lack of data,” she says. “There’s underreporting on children’s experience of violence. We really need a strong evidence-based approach to this so we can get the right investment on the prevention side in particular.”

While legislation may be useful in extreme cases, McCarney and others are adamant that a holistic approach—which starts with education, support and prevention in the schools—will ultimately lead to less bullying in-person and online. By the time a child commits suicide, it’s clearly too late.

**“You don’t legislate empathy,” says Faye Mishna, one of the country’s leading experts on the subject. “You teach empathy in the schools. You develop a climate where kids are empowered to stand up for others who are being bullied.”**

Jane Bailey, LLM 2002, agrees. The associate professor at the University of Ottawa law school researches cyberbullying and co-directs The eGirls Project, which documents girls’ online experiences. “We need to focus on proactive approaches but I worry they’re the ones most likely to be overlooked because they’re not short-term solutions. They’re long-term solutions. And in many ways, they get right at the issues that are reflective of social problems that we’ve known about for a very long time, and we’re now seeing them reflected in the mirror of technology.”

One prevention model that has been put into practice successfully is at Forest Hill Collegiate Institute, a public high school in central Toronto. Before students even enter high school, there are Grade 8 visits and a parents’ evening, during which the principal discusses school safety and the intelligent use of electronics and technology. Incoming ninth graders hear the message again during opening assemblies, where social networking is highlighted as a tool that should never be used to hurt or embarrass another person. There is a Grade 9 leadership day when Toronto police come in and hold a seminar on street-proofing and how to avoid bullying behavior in the cyberworld. For the upper years, a social networking expert with the police department has come in to run presentations on privacy settings, what constitutes an inappropriate online post, and to offer students practical resources and contact information for support in case they run into trouble.

In the more than two years that Geoffrey Vanek has served as a vice-principal at the school, he has only had to deal with two specific cases involving cyberbullying, which he says often begins with a face-to-face joke. “Then the joking moves into the cyberworld where they might be texting on their phones,” he continues.

**“The distance the electronics create often causes problems because of the way things are written. People get sloppy with their language and this will often exacerbate a situation.”**

Amendments to Ontario’s Education Act have given school authorities more power to discipline, suspend and expel students who engage in online bullying behaviour, even if it originates off-campus. Vanek says at Forest Hill they have defused heated situations in some cases through mediation with a social worker. The students involved are asked to sign a contract that demands mutual respect. And the parents are contacted and made to



Parents often have no idea what their own children are up to, and when they find out, Jones says they are usually incredulous.

understand that their involvement is essential. The bully, the victim, and the bystanders are all included in the discussion.

“Can it be legislated out of existence?” Vanek wonders. “The legislation is there and it can be helpful, but I think the real manner with which the issue will be dealt is through education: following the Golden Rule. Don’t do anything to someone else that you wouldn’t want done to you.”

While the message may be resonating at Forest Hill Collegiate, in suburban Scarborough, where Brock Jones, JD 2004, works as an assistant crown attorney, cases related to online bullying seem to be on the upswing. Jones, who is also co-director of the youth justice team, is primarily responsible for youth prosecutions. In order for a case to make it across his desk, there needs to be an explicit criminal element and he is seeing a surprising number of them. One in particular involved three teenage girls who were relentlessly victimizing another girl at their school.

“They confronted her and beat her up in a locker room and tried to force her to swallow some gum that another girl had chewed and called her all these terrible names,” Jones says. “One of them filmed it on a cellphone and posted it on Facebook where of course it spread like wildfire, with a lot of nasty descriptors calling her a slut.” The girls were charged with assault and criminal harassment, but the case may never have even made it to Jones’ office, if an unrelated parent hadn’t eventually seen the video online and reported it to the school. Parents often have no idea what their own children are up to, and when they find out, Jones says they are usually incredulous.

“I have all but seen someone’s jaw drop right in front of me,” he says. “They can’t believe their kid is doing this. When we show them the evidence, there’s really no getting around that it happened.”

Jones wonders whether these teenage perpetrators really grasp how cruel they’re being, and he too believes that a concerted effort in the schools would make a real dent in the number of cases that end up in the courts.

As Canada struggles with this modern-day, multi-layered challenge, other countries are doing the same. South of the border, almost every state in the U.S. has adopted some form of legislation aimed at online bullying. Several dozen have enacted laws that specifically ban it. In Florida, two minors were recently arrested and charged with felonies after allegedly harassing a classmate so relentlessly that the girl, 12-year-old Rebecca Sedwick, jumped to

her death from a cement factory tower. According to police, the arrests came after one of the alleged perpetrators posted on Facebook that she had bullied the victim and didn’t care that she had died.

Because the Internet crosses all geographical boundaries and reaches beyond the school yard, through walls and into children’s bedrooms, keeping tabs on who is saying what and on which website has become almost impossible. Certain interactive sites and apps, including Formspring (now called Spring.me), Chatroulette, Ask.fm and Kik, seem to invite online abuse because users can participate relatively anonymously. But Facebook, Twitter and YouTube remain popular among perpetrators too. Setting up a fake account in someone else’s name is a choice tactic among tormentors, often used to stalk, harass, and destroy a person’s reputation. No one should be surprised by what’s going on, says Brenda Cossman. Bullying is an age-old and pernicious problem, and cyberbullying is just the newer, more pervasive model. “It’s horrifying that it had to get to the point of teen suicide to take into account things that have had other terrible consequences for years.”

But many experts agree that punishing every person who misuses the Internet is not going to work as a viable, long-term solution. Says Jane Bailey: “I think law is a potential instrument of social change but we need to think very clearly of legal responses as components of an overall strategy.”

Ask Plan Canada’s Rosemary McCarney what she would like to see and it’s this: a bold, strategic, data-driven policy that focuses on education and prevention, involves all levels of government and crosses a variety of different sectors. “We can’t just react to and respond to bullying, whether it’s sexual, physical or psychological,” she says. “It’s interrelated. And our solutions have to be interrelated as well.”

Additional reporting provided by Lucianna Ciccocioppo.

The Faculty of Law’s Centre for Innovation Law and Policy, together with the Factor-Inwentash Faculty of Social Work, hosted a conference in May 2013 on this issue, called: “Clicks and Stones: Cyberbullying, Digital Citizenship and the Challenges of Legal Response,” where Prof. Faye Mishna and Adjunct Professor Eric Roher moderated panels, and alumnae Professors Jane Bailey and Andrea Slane were among the presenters.



why the  
Cohen twins  
chose social  
justice  
not science

FAMILY TIES

BY ALEC SCOTT, LLB 1994  
PHOTOGRAPHY BY JASON GORDON



# “Are our similarities or our differences greater?” asks Matt Cohen, speaking about his twin brother Jonathan.

At first the answer seems easy. I interview both of them—Matthew in his Toronto office, Jonathan in a restaurant on Manhattan’s Upper West Side—and their similarities are many and striking. They share a certain look and some mannerisms: dark curly hair, kept short; trim forms; big, searching eyes; an identical way of tilting their heads when asking a question. Their equally strong convictions get leavened by a snappy, distinctively Nova Scotia-style irreverence—they grew up in Halifax. Matt is nine minutes older—“and he won’t ever let me forget it,” Jonathan says. But this means Jonathan, the youngest of five children, gets to ask the four questions at the Passover Seder.

After graduating from U of T law one year apart, they had many options open to them. Jonathan (Class of 2000) clerked at the Supreme Court (for Mr. Justice Michel Bastarache), and Matt (Class of 1999) landed a plum position at Osler, Hoskin & Harcourt LLP. But both have ended up pursuing work that might loosely, in one case, and precisely, in the other, be called *pro bono publico*, work for the public good.

Jonathan moved from Ottawa to New York to work for Human Rights Watch, and is now the deputy director of the public health program at the George Soros-founded Open Society Foundations. Matt left Osler to do a master’s in human rights law at the University of Cape Town and returned to Toronto to work for a small firm advocating on behalf of the mentally ill. He is now director of litigation projects at Pro Bono Law Ontario (PBLO).

In most families, the twin lawyers would be far and away the highest achievers, inevitably the first spoken of by the proud parents. But they see themselves as outsiders, not the heirs to the throne in a medicine-and-science dynasty in the making. Their now deceased father headed nephrology at a Halifax hospital, and their mother, the daughter of Holocaust survivors born in a displaced persons camp, became a top-tier biochemist. Two older siblings are doctors, and the other works in genetic counseling.

“Honestly, we are the black sheep,” Jonathan says.

Matt elaborates: “When we went to university, there was this sense that “They’re both doing a BA? What went wrong?” ”

In separate cities, they make this same fancy bit of self-deprecation. But after some time with each of them, they start to differentiate, to come into focus as individuals, not halves of a duo.

## JONATHAN COHEN

Jonathan arrived at U of T law in 1997, after doing his undergrad at Yale and a master’s at Cambridge. (“He was always strong academically, always,” Matt says.) He was co-editor-in-chief of the Faculty of Law Review and did an International Human Rights Internship at Unicef in Thailand.

Walking to work at the Supreme Court one day, along Wellington Street in Ottawa, he figured out what he wanted to do with his life. “I knew I wanted to work on AIDS internationally. It engaged all sorts of things of interest to me—gay rights, women’s rights, children’s rights, prisoner’s rights, economic, social, cultural rights.” To see if there was some possibility of actually doing it, he approached Madam Justice Louise Arbour. She’d just come off several years prosecuting war crimes allegedly committed in Rwanda and the former Yugoslavia. “After hearing me out, she said I should pursue it. Without her letter and the field work in Thailand, I’m pretty sure I wouldn’t have landed my first job in this area.”



At Human Rights Watch, Jonathan focused on AIDS and human rights (as he had hoped), producing a report on the way that Thailand’s so-called War on Drugs was helping the disease to spread, first among intravenous drug users, but moving on from there. “We released the report while an international AIDS conference was happening in Bangkok, one of my first experiences of ‘Name and Shame,’ using a big international event hosted by a country to embarrass them into action.”

Another report targeted Uganda’s use of some of the \$15-billion that George W. Bush’s regime earmarked to fight AIDS in Africa for programs promoting abstinence from sex before marriage. “The Ugandan government was interested in hoarding money and attention to distract from the other human rights abuses they were committing—for a program that does not work, that was based on religion not science.”

In 2006, he moved to the funding side of the equation, joining the New York-based NGO, the Open Society Foundations.

Jonathan was married in the fall of 2012 at the Yale Club to his same-sex partner, an Emmy-winning film editor, in a wedding celebrated in the pages of The New York Times. “I had one request for our honeymoon—that we not go somewhere I’d been for work, or that was connected to work. It wasn’t easy, but we ended up going to Argentina.”

Lately, the NGO he works for has paid more attention to Burma. “This organization was founded to help the Eastern Bloc countries move towards democracy, and so, in a different context, we’ve worked on these issues before. What interests me is that unlike the bottom-up movements of the Arab Spring, this was the elite, tired of their country being an international pariah. You never know what’s going to turn things, which approach will work.”

## MATT COHEN

Matt Cohen does the interview in a box-filled boardroom in Pro Bono Law Ontario’s offices. Until this past summer, the organization occupied part of the old Bank of Upper Canada Building and its neighbour on Adelaide Street East.

It’s a site where two distinct political visions of Toronto once clashed. In 1837, a handful of rebels led by egalitarian firebrand William Lyon MacKenzie proposed to bankroll their uprising with gold from this very building. Now, in a sense, those pushing for a more just society are within, inside this Second-Empire low rise, just east of Toronto’s downtown core.

There’s sunlight coming through the tall windows of the boardroom, as Matt tells me about two big upcoming developments for him. When we speak, PBLO is getting ready to move from this building into a more convenient, but less storied, office across town, in a restored warehouse, and the enthusiastic athlete is about to undergo knee surgery. Boxing is the married father of two’s latest obsession, joining tennis, basketball and baseball. “I need my exercise, so that’s going to be tough,” he says. “I’m planning to focus more on cooking during the [six-month] recovery period.”

I can tell he wants to win in the kitchen, too, another passion of his. Perhaps this is not a surprise given what I’ve seen on his resume: in addition to the athletics, he was a debater in high-school, and one of the top competitive mooters of his year when he was at the Faculty of Law. He summered at Osler, Hoskin & Harcourt LLP, then joined it after he graduated. But in person, he doesn’t come across as terribly Type A. Of the twins, he seems more the one to let life come at him, and decide what to do then.

“It’s probably come as no particular surprise to anyone who’s known me that this is what I’m doing, working in social justice, in law. But I came to these things in stages—usually following my brother, who was generally one step ahead.” But he adds: “Still I’d do so for my own reasons.”



I’m not sure how I expected him to describe his decision to leave Osler, to do a master’s focused on human rights law in Capetown. Or how he might speak of his decision to switch gears still further when he came back to Toronto, first joining Swadron Associates, a small firm that has advocated fiercely for the rights of the mentally ill for years, and then PBLO.

But there’s no left vs. right, radical vs. establishment, MacKenzie vs. the Family Compact to it. He liked Osler, respected the training

and the lawyers with whom he worked, and the specificity with which he describes the work, the names he gives to his lawyer colleagues and supervisors, gives chapter and verse of his liking. “I was never a malcontent. I just thought after three years ... I was single at the time, had saved some money, I still had some of these other interests—travel, the developing world, it all came together. And I could feel the fulfillment my brother was getting out of his work in New York [with Human Rights Watch].”

Cohen studied the new South African constitution at the University of Cape Town, focusing on its most revolutionary aspect—the enshrinement of social and economic rights (housing, education, employment) in the new instrument. “It was influenced by our Charter, but explicitly took that one major further step beyond the civil and political rights,” he says. But hope for the future wasn’t his takeaway. After a backpacking trip from the Southern tip of the continent to Eritrea, he concluded: “Basically, you end up being overwhelmed by the scale of untapped potential on the continent.”

He came back determined to do something, but what wasn’t clear. He found he was drawn to the father-and-son firm Swadron Associates and its long-time commitment to the rights of the mentally ill. It was during his time at Swadron that he met and married his wife, another lawyer, who currently works at the Ontario Attorney-General’s office. After a time, PBLO, a registered charity, approached him. Would he act as a resource for the organization’s help centres giving legal and strategic advice to unrepresented litigants? Eventually, he moved to the organization full-time. PBLO’s focus is the civil courts, not criminal or family. Although he comes across litigants facing mental health challenges (“That work with Swadron remains relevant”), he finds the time at Osler also helps. “Many of the lawyers we ask to take on major impact litigation are at the big firms, and it helps me to know, from having been there, the other challenges they’re facing in their practices, where they’re likely to have expertise, and where less so. It might surprise you but it’s generally not a hard sell to get people, even terribly busy lawyers, to take on this work. The commitment to do so is out there.”

## CONCLUSION

A paradox: if either of them found it easy, they probably wouldn’t have gone in for this kind of work. Both have aligned themselves with organizations taking on intractable issues—Jonathan the promotion of democracy and public health in the world, Matthew, access to justice. For his part, Jonathan says of the field reportage he’s done: “Ultimately with human rights documentation, you’re providing people an opportunity to tell their story ...” Then he sighs. “For most of them, that’s the most justice they’re ever going to get.”

Matt is similarly a realist about his work. “Frankly there are many moments of perceived failure, periodic feelings of futility to be honest. Today I am to look at the various aspects of this case that came in through the help centre. This guy is pursuing so many remedies—and there seems to be a grain of injustice here. But I’m not sure he’s going to win on any of them. I suspect he should, but there’s a good chance he won’t.”

But Matt decides to end our interview on an upbeat note. “Still, when you look in broad strokes at the progress in these causes—the rights of the mentally ill compared to 50 years ago, the spirit of self-help and pro-bono now as opposed to even 10 years ago—we’re making headway.”



# Operation court rescue

## The campaign to save the Family Law Project

BY RANDI CHAPNIK MYERS  
PHOTOGRAPHY BY GORDON HAWKINS



TO THE RESCUE:  
(FRONT FROM LEFT) ROSLYN TSAO, RICHARD GREEN, NIKKI GERSHBAIN  
AND PHIL EPSTEIN. BACK: MARGUERETTA HANNA

Last July, when Ontario Court Justice Harvey Brownstone met lawyers Nikki Gersh bain, LLB 2000, and Phil Epstein, LLB 1968, for breakfast at downtown Toronto’s Metropolitan Hotel, he knew they had to discuss some very bad news. The Family Law Project (FLP), a crucial pro bono service for low-income litigants he helped to found 17 years ago, was at risk of closure. In fact, as Gersh bain explained, the situation had become so dire that she needed substantial financial support to keep it running.

The award-winning project that has law students serving thousands of unrepresented Ontarians in provincial court each year was on the chopping block because the organization running it, Pro Bono Students Canada (PBSC), was facing a shortfall of \$400,000 over three years, according to Gersh bain, PBSC’s national director.

Brownstone was saddened.

“I couldn’t believe that this vital, universally supported program that lies at the very heart of the family justice system, was in such financial straits,” says Brownstone. “Our court system would literally implode without it.”

The judge first conceived of the Family Law Project after massive Legal Aid cutbacks in 1996 caused a deluge of unrepresented people in family court. All of a sudden, litigants no longer qualified for Legal Aid but at the same time, they could not afford to pay a lawyer to help them get relief. As a result, the courts slowed, almost to a standstill.

After speaking about the crisis at the University of Toronto Faculty of Law, Brownstone realized that during the painful and confusing time of a breakup, what unrepresented spouses needed most was guidance filling out the documents to get their stories before a judge. And law students could easily do that work.

He was right. Through the Family Law Project, PBSC began recruiting students from across Canada to help some of the most vulnerable members of our community. Today, students from five Ontario law schools work in eight family courts for 10 months of the year.

Gersh bain, who practiced family law with Phil Epstein after she graduated, says “family law clients often find themselves in crisis. Not only do most face financial hurdles to accessing the justice system, many experience additional barriers, including language, education, culture and fear of domestic violence and reprisal by their spouse.”

Litigants often need immediate relief in the form of interim custody, access or restraining orders. Under the supervision of Legal Aid lawyers, PBSC students help them fill out their forms and navigate the complex court system, providing them dignity, guidance and direct legal assistance.

Philip M. Epstein, Q.C., co-founder of Epstein Cole LLP in Toronto, believes so strongly in the Family Law Project that he offered to help save it—“right there at breakfast,” says Gersh bain.

While she was delighted by her former boss’ generosity, she was not at all surprised. “Phil Epstein is considered to be one of

the leading family lawyers in Canada. He is also one of the most generous people I have ever met. He has been a mentor and an inspiration to me. I knew how committed he was to pro bono because when I practiced at the firm, I worked on a ton of pro bono files. I was confident he would step up.”

And step up he did. In addition to offering a combined personal and firm donation of \$150,000, Epstein volunteered to chair The Pro Bono Students Canada Campaign for Family Justice. With a fundraising goal of \$650,000, his efforts will not only preserve the program but will also allow for its expansion.

“I am well aware of the significant problems in the family justice system and I will do anything to improve them,” Epstein says, and he is making good on that promise. After assembling a committee of leading family law professionals, he is hard at work soliciting donations from anyone with a strong interest in social justice, including Mattamy Homes founder Peter Gilgan, who came to the FLP’s rescue with a generous \$150,000 gift.

The campaign has now raised more than \$300,000, and will culminate in a gala event on October 23, 2014. In the meantime, the committee is working on securing high-end auction items such as sports tickets, art and access to vacation homes.

Epstein Cole articling student Margaretta Hanna, JD 2013, is relieved that the firm she works for is doing its part to save the Family Law Project. In law school, she was the FLP program coordinator for the University of Toronto.

“With 82 per cent of people coming to court unrepresented because they can’t afford lawyers, this program keeps students very busy. Without their work, the courts couldn’t function. So many lives would be affected,” Hanna says.

Her most memorable client was a woman, a new Canadian, who had gathered the courage to take her kids and leave her abusive spouse. Living in a shelter, the woman needed an emergency motion to get full custody so her husband couldn’t take the kids to another country. But standing up in court was difficult. In her culture, women didn’t speak directly to men—and the judge was a man.

“This woman needed five documents completed to get her story told. It took all day but in the end, the judge gave her a custody order, a restraining order and child support—all on a temporary emergency basis,” Hanna says. “That day changed her life, and I was a part of it.”

The fact is, almost every client needs help in family court, Hanna says. There’s a lot of complex paperwork—including affidavits and financial statements—and language is a common barrier.

But while the Family Law Project is invaluable to the public it serves, it has far-reaching benefits as well, Brownstone says. Not only does the program keep the courts moving swiftly, but it also offers law students the rare opportunity to get out of the classroom and into the courtroom.

“This program creates a pool of lawyers that want to do this important work, so it helps our profession grow,” Brownstone says. At the same time, he adds, it instills a valuable pro bono ethic in the next generation of lawyers.

Gersh bain says that even though she had faith in her former boss and law firm, “in my wildest imagination I never expected this level of generosity.”

“Phil Epstein and Epstein Cole have not only single-handedly saved our Family Law Project, they have saved PBSC. By jumpstarting our campaign, we can avoid laying off almost half our staff. We are all in their debt.”





## Nexus lands international MarCom and Content Marketing awards



Nexus racked up the 'metals' this year, its 30th anniversary: four platinums and two golds from the 2013 MarCom Awards, and a silver from the 2013 Content Marketing competition.

The MarCom Awards recognize creative work in a global competition open to individuals and companies, from non-profit associations and educational institutions, to advertising agencies and Fortune 500 companies.

The Spring/Summer 2013 edition, featuring an illustrated cover by Brian Stauffer depicting a conceptual start of the new Jackman Building, landed a platinum award for cover design (print). The issue also received platinum recognition for magazine writing.

The Fall/Winter 2012 issue received platinum awards for educational institution magazine, and magazine writing too.

Both issues landed MarCom gold awards for overall print-magazine design.

In addition, earlier this year, Nexus landed a 2013 Content Marketing Award: a silver for best university publication.

Nexus is published by the law school's advancement office, with Kate Hilton as editor-in-chief, Lucianna Ciccocioppo as executive editor, Dylan Reid as copy editor, and Nancy Reid as publication assistant, together with an award-winning freelance contributing team. Art direction provided by Katina Constantinou of Sugar Design.

## HAVE FUN. IT'S THE LAW.

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If you graduated in a year ending in 4 or 9, mark your calendar now for Law Reunion 2014, October 24–26.

To volunteer on your Class Committee, please contact the Alumni Affairs Coordinator at [heather.thornton@utoronto.ca](mailto:heather.thornton@utoronto.ca) or 416-946-0888.

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NOTA BENE

## LAWYER ENGINEERS A BETTER LAW FIRM—ONLINE

BY LUCIANNA CICCOCIOPPO  
PHOTOGRAPHY BY REGINA GARCIA



**M**onica Goyal, JD 2008, remembers the day the 'light bulb' turned on in her head. She was an associate at a large downtown Toronto law firm, billing close to \$200 an hour. "And I realized that I could not afford myself."

Goyal decided to do something about it. Her engineering roots—a degree from University of Waterloo, an master's from Stanford University, and several years of working in Toronto and Silicon Valley startups—took over once again to help her launch My Legal Briefcase in 2011.

The online resource provides a three-step process for accessing legal forms, and guides users to next steps. You can set up a will, power of attorney, a non-disclosure agreement or research how to bring or defend a claim, for a fraction of the cost of using a lawyer.

"I was always interested in access to justice," says Goyal. In law school, she worked at Downtown Legal Services. And even before her law school days, knee-deep in the latest computer graphic interface theories for her graduate degree, she was involved with the local Amnesty International chapter when at Stanford.

"Now I've put these two passions together, and I find I really enjoy using my tech background in the legal space."

My Legal Briefcase is currently the only online resource servicing small claims. If users wish to progress their case or need

further information, the site—now conveniently and privately storing all their filled-out forms, documents and paperwork—can refer them to a variety of lawyers and paralegals, who contribute content to the site, and the preamble is already completed.

It can also connect clients to Goyal's newly rebranded Aluvion Law PC. Not your typical firm (purple corporate colours, name derived from the Latin *alluvium*: new land created along the banks of a river), it actively encourages small business clients to incorporate using its online services—for just \$750. It even has a chart, with the office goods-and-equipment chain Staples, US-based Legal Zoom and the average law firm fee as comparables. But it also has a brick-and-mortar backend to take clients from the virtual space to the office space.

"The value lawyers provide goes beyond what a software program can do. For a particular type of estate planning, or will restructuring, software can streamline a lawyer's work, but it can't replace the lawyer."

Her high tech to legal tech focus keeps her busy blogging (itBusiness, Small Firm Innovation and Law Times), tweeting (@monicangoyal) and marketing (Google ads and trade shows).

"It's really interesting because it feels like I've gone full circle," says Goyal. "This site has been a journey. I've certainly learned a lot along the way. When you create something innovative, launch it, watch it working, it's really rewarding."



# Breaking down the two solitudes of theory and practice

BY KENT ROACH, LLB 1987, PROFESSOR AND  
PRICHARD WILSON CHAIR IN LAW AND PUBLIC POLICY  
ILLUSTRATION BY ANNA PARINI

There is an unfortunate tendency to dichotomize the worlds of theory and practice. Lawyers and judges who practice sometimes see the work of legal academics as precious and irrelevant. Similarly legal academics may so immerse themselves in the rich world of the university they sometimes forget that they are also lawyers and that most of their students will become lawyers.



The divide between theory and practice seems to be growing and is leading some to question the relevance of law schools. This is unfortunate, because law schools are well-suited to bridge that divide and in doing so enrich both fields. One need only think about some of the collections of essays edited by U of T Law faculty over the last decade or so on practical topics, such as the head tax case, the anti-terrorism bill, medicare, legal aid and the role of Parliament. All of these books brought insights from academe to practical and topical subjects.

At the Faculty of Law, we are also fortunate to have a vibrant clinical program that helps bridge the gap. I am most familiar with the work of the David Asper Centre for Constitutional Rights, which is celebrating its fifth anniversary. The Centre has already intervened in 11 cases including eight at the Supreme Court of Canada. Students work hard conducting research to assist the lawyers in the cases and learn practical skills relating to the preparation and filing of courtroom materials.

But does this temporary taste of the deadlines and realities of practice pay sufficient educational and theoretical dividends? I would say it does. Most of the Asper Centre's interventions have focused on access to justice issues. Such issues are a perfect meeting place for theory and practice.

One of the Centre's first interventions in the Supreme Court was the Conway [2010] 1 S.C.R. 765 case where it argued with success for a broad interpretation of the jurisdiction of administrative tribunals jurisdiction to award Charter remedies. This recognized the costs of obtaining remedies from the superior courts.

The Centre, however, has not given up on the superior courts and has argued in Ward [2010] 2 S.C.R. 28 for the availability of damages as a remedy under the Charter and in Caron [2011] 1 S.C.R. 78 for the availability of advanced costs orders to allow Charter arguments to be made. More recently, the Centre argued for broader public interest standing in Downtown Eastside Sex Workers [2012] 2 S.C.R. 524.

Students need to appreciate both sides of the theory/practice coin. For example, the Supreme Court's decision in *Vancouver v. Ward* [2010] 2 S.C.R. 28 was in many ways a theoretical success. The Court's unanimous judgment was an elegant clarification of what had been a muddled and incoherent jurisprudence.

In every case, Charter applicants would have to justify damages as necessary to compensate, vindicate or deter Charter violations and these functional considerations would also drive the quantum of damages. At the same time, governments could argue that damages would not be appropriate because of an open-ended range of countervailing factors including the

availability of alternative remedies. The Court demonstrated the meaning of this structure by upholding a \$5000 damage award for the unconstitutional strip search of Vancouver lawyer Cameron Ward while holding that a \$100 damage award for the unconstitutional seizure of his car was not necessary.

Arguing the case for the Centre certainly helped my own scholarship. I re-wrote the chapter on damages in my text of constitutional remedies and kept writing till I had a new edition. Moreover, the Court's use of a mini section 1 in determining whether damages should be explored forced me to examine the role of proportionality, the central organizing idea in public law, in the field of constitutional remedies. Exploring how this theme emerges in Canadian and comparative jurisprudence will keep me busy for years.

I enjoy teaching Ward to the students in my advanced constitutional law but was recently reminded not to let my intellectual admiration of the judgment get ahead of itself. Three years later, there are pitifully few cases applying Ward to award damages.

The problem is not the theory of Ward but the nature of practice. Some cases have gone off the rails by suing individual officials and not governments and judges have used the \$5000 award as a starting point: something every lawyer reading this piece knows ensures that only economically irrational plaintiffs and lawyers will take on such cases. Fortunately, there are some out there. Nevertheless, we still must find a way to deal with access to justice if the promise of Ward and all other theoretically satisfying laws are to be realized.

As tempting and familiar as it is to reside in the separate worlds of theory and practice, we must break down the walls. Academic lawyers are fortunate to have a living laboratory in the practice of law to test and refine their theories. Practitioners are fortunate to have access to academic lawyers, many with advanced degrees in the cognate disciplines, and with time and resources to think beyond the next case. Academics and practitioners have much to learn from the other. We are all in this together. ↩

Kent Roach is chair of the Asper Centre Advisory Committee and has represented the Centre in a number of cases, including Ward and Downtown Eastside Sex Workers. He published the second edition of *Constitutional Remedies in Canada* in 2013 and was recently awarded a Trudeau Fellowship which will be used in part to examine constitutional remedies in a comparative fashion. The 2014 Asper Centre annual conference on February 28 will examine constitutional remedies.



Kate Hilton, JD 1999,  
Assistant Dean  
of Advancement,  
Faculty of Law

On fundraising, fiction  
and saying farewell  
to the law school

BY LUCIANNA CICCOCIOPPO  
PHOTOGRAPHY BY MICHELLE YEE

**LC:** Many believe we're not destined to have one career – you could be the 'poster child' for this! Tell us what you've done since you graduated from the Faculty of Law?

**KH:** Law wasn't my first career; I actually started out in publishing as an editor. When I graduated in 1999, I intended to become a litigator, and I articulated at Gowlings. But it turned out that practicing law wasn't for me. Ron Daniels recruited me back to the law school while I was studying for the Bar Ads and trying to figure out what to do with the rest of my life. My first post was as the director of special projects, doing strategic planning, writing and managing complex files for the Dean's Office. It was an amazing learning experience. Then in 2004, I was appointed the assistant dean of advancement, and all of a sudden I was a major gift fundraiser. I've been running the fundraising and alumni relations arm of the law school ever since.

**LC:** How have the fundraising and alumni relations programs changed in your decade at the helm?

**KH:** They've changed enormously, because we—like every other public institution in the country—have had to adapt to new realities: cuts in traditional sources of funding, a poor economy, the rise of digital and social media, and an increasingly crowded charitable sector. We've had to become more sophisticated in how we approach fundraising, and more creative and responsive in how we design alumni communications and programs. For example, it used to be that our alumni programs consisted of Reunion, the Distinguished Alumnus Dinner and a handful of public lectures. Alumni would tell me that they felt disconnected from the law school even though their time as students had been formative. I recognized that we needed to tailor our programming to provide different kinds of opportunities for

engagement—events for families, for women, for LGBT lawyers, for alumni in particular neighbourhoods and for young alumni—and to give graduates more contact with current students. Today, our Alumni-Student Mentorship Program places 300 students each year with alumni who want to provide guidance and support to the next generation of lawyers.

**LC:** What about communications?

**KH:** Nothing in fundraising and alumni programming has changed as much as the way that we communicate with people. Ten years ago, I spent a lot of time writing letters. Now email seems old-fashioned. The Advancement Office devotes a lot of energy to social media, to our website and to our e-newsletter. *Nexus* magazine is still the cornerstone of our communications strategy, but it's changed too. We surveyed alumni extensively about *Nexus* and learned a lot about their interests and preferences. We still cover faculty research, but we put it in a broader context so that readers can understand its relevance to larger social issues. And we put a huge emphasis on alumni profiles, so that readers can see the power of a U of T law degree and the extraordinary range of possibilities that open up once you graduate.

**LC:** And now you're leaving us. To do what?

**KH:** My first novel, *The Hole in the Middle*, has just been published by HarperCollins. It's a comic novel about a working mom having a midlife crisis (entirely fictional, of course). It's been so well-received that I've decided to spend more of my time writing fiction. And I'm also planning to do some fundraising consulting in the non-profit sector. I love working with organizations that are trying to build something new or to reimagine themselves. It appeals to my creative side.

**LC:** Which of your accomplishments are you most proud of at the Faculty of Law?

**KH:** I'm incredibly proud of our successful campaign for the new building. Raising \$54 million in a recession was a very tough assignment, and many people thought (and said) that it couldn't be done. The design for the new building is just incredible, and it is going to transform the student experience. I love that I was part of creating something that is so important to the Faculty's future. Every time I look over at the construction site across the parking lot, it gives me a thrill.

**LC:** Favourite law school memory?

**KH:** Falling in love with my classmate (and now husband of 13 years), Rob Centa.

**LC:** Have you started working on your second book? What's next?

**KH:** I've started an outline. I'm really looking forward to being able to spend more than three hours a week on writing! As for what's next, I've always wanted to write something set in a law school ... ↩

Read the complete Q & A online at: [law.utoronto.ca/nexus/katehilton](http://law.utoronto.ca/nexus/katehilton).





PHOTOGRAPHY BY MICHELLE YEE

## REUNION 2013

About 370 alumni who graduated in years ending in '3' and '8' attended a variety of reunion events Oct. 25-27, 2013: brunches at the law school, dinners in downtown restaurants, kids' activities, and for the first time, a construction tour of the demolition site.

The Rowell Room was dusted off and cleaned up for the opening cocktail event, which included small group tours of the demolition site in the former Bora Laskin Law Library. [see Final Submissions, p.38].

Hats off to the four alumni from Class of 1958.



## 1958

**HARRY ARTHURS, LLB:** I continue to do a fair amount of academic writing, give guest lectures and supervise graduate students. From time to time, I'm asked to advise governments on policy issues (most recently: the funding of workplace insurance in Ontario 2008-10) and to assist public and private organizations with governance issues. We travel a good deal (in recent years the UK, France, Sri Lanka, Kenya, South Africa, Argentina) and spend time with our two sons and four grandchildren.

## 1968

**RODICA DAVID, LLB:** After 43 years, I am proud to say that I continue to enjoy practicing as a fulltime family law lawyer. I believe that I can claim with pride that I continue to be considered one of the top family law lawyers in Toronto and possibly beyond. Our family law boutique firm located in the heart of Yorkville, only minutes from my beloved alma mater, has a number of lawyers at varying levels of experience, all of whom are devoted to exemplary service for our clients, many of whom are going through a very difficult time in their lives. I am pleased to continue to sit on the University of Toronto Tribunal. I am happily living with my partner Howie Rosen and my beloved pooch, Boo Kee, in central Toronto. I enjoy many activities including tennis (both watching and playing), wine collecting and tasting, golf (sometimes, but needs improvement), Florida condo, theatre, ballet, bridge and mah-jong. I think back on my law school days with great fondness - three of the best years of my life. Since then, I have enjoyed much good fortune over the years as I hope my classmates have also done. [rdavid@dcbfamilylaw.com](mailto:rdavid@dcbfamilylaw.com)

## 1974

**IAN A. GRIFFIN, LLB:** This fall, I received Master Professional designation from the United States Professional Tennis Association at the annual USPTA World Conference's

awards presentation in Orlando, Florida. USPTA is the world's oldest and largest association of tennis-teaching professionals, and Master Professional is its highest level of professional certification. There are 157 worldwide. After law school, where I also played Varsity tennis and squash, I chose to pursue a career in tennis, chiefly in Texas. I directed the City of Beaumont's junior public parks program from 1980-1994, coached a US National Junior Champion, and wrote the chapter on contracts for the "USPTA Guide to Municipal Tennis Operations". In 2012, I was invited by the Rwandese government to consult with coaches. I conducted clinics in Kigali, and I plan to return in 2014. [iangriffin4igta@aol.com](mailto:iangriffin4igta@aol.com)

**BARRY LEON, LLB:** I am partner and head of Perley-Robertson, Hill & McDougall's International Arbitration Group. I was named 2014 Ottawa International Arbitration "Lawyer of the Year" by Best Lawyers™ International.

## 1983

**JEANANNE KATHOL KIRWIN, LLB:** I am married to Class of 1982 law graduate Patrick Kirwin, and together with seven or eight others, we practice law in Edmonton at Kirwin LLP, [www.kirwinllp.com](http://www.kirwinllp.com). We have four children (ages 25, 24, 22 and 17), of whom the oldest three are graduates of McGill University. One is living and working as a software developer in Montreal and two are pursuing their master degrees (so far, none at UofT and no law school students!). Our fourth is in Grade 12, so perhaps there is hope. Together with our dog, our family of six took a year-long sailing sabbatical in 2000-2001 that is documented on my website [www.jeanannekatholkirwin.ca](http://www.jeanannekatholkirwin.ca).

**ANNETTE NICHOLSON, LLB:** It was a big milestone to call the LSUC last year to ask to be put on non-practising status after practising law for 27 years. The irony is that I went to law school with absolutely no intention of practising law—only the desire to study it. I loved law school and then fell in love with the practice of law, as a commercial litigator in private practice

and then in-house as general counsel. Now I am vice-president for corporate strategy and regional management of the International Development Research Centre, a federal Crown Corporation. Although no longer practising, I still consider my legal training to be invaluable to how I approach challenges.

## 1988

**CATHERINE LYONS, LLB:** Every memoir has many chapters. This latest chapter unfolds in the hands of an unreliable narrator, somewhat like a mystery, full of tragi-comedic moments and high adventure punctuated with long bits of narrative dialogue. In this chapter, I spend more time in the kitchen and less time making peanut butter sandwiches; more time eating Halloween candy and less time making Halloween costumes; more time in board rooms and less time in data rooms; more time enjoying reading books recommended by my children and less time reading to my children. I also spend more time being thankful. In this chapter, I am trying to make a contribution to my community. My husband and I have chosen two charities which are important to us: conservation of nature and children's mental health. I am on the board of the Nature Conservancy of Canada which has protected over 2.6 million acres of ecologically significant lands in Canada and my husband chairs the board the Hincks Dellcrest Centre which is devoted to children's mental health, research and treatment and serves 8,000 children and their families each year. In my thankful chapter I am realizing the debt of gratitude I owe to my family, friends and community. I have not attained these privileges on my own. There is one more charity I am contributing to: the new building project at our law school. The law school set the foundation which has allowed me to become a partner at Goodmans (which I love – see also chapters 1990-2013). [cl Lyons@goodmans.ca](mailto:cl Lyons@goodmans.ca)

## 1992

**PAUL PATON, JD:** I spoke on an ABA CLE Centre Showcase Program: The New Ethical Terrain of Global Legal Services, at the American Bar Association's Annual meeting in San Francisco in August. I presented at the Law Society of Upper Canada's Symposium on Alternative Business Structures in Toronto on October 4 and was an invited speaker for the Fordham Law Review Ethics Colloquium in New York on October 18. I presented on alternative business structures and future directions for the delivery of legal services at the Law Society of England and Wales and at the University of Washington in Seattle in November. I'm professor of law and director of the Ethics Across the Professions initiative at the University of the Pacific in Sacramento, California and remain a monthly columnist for Lexpert on ethics issues facing the profession in Canada. [ppaton@pacific.edu](mailto:ppaton@pacific.edu)

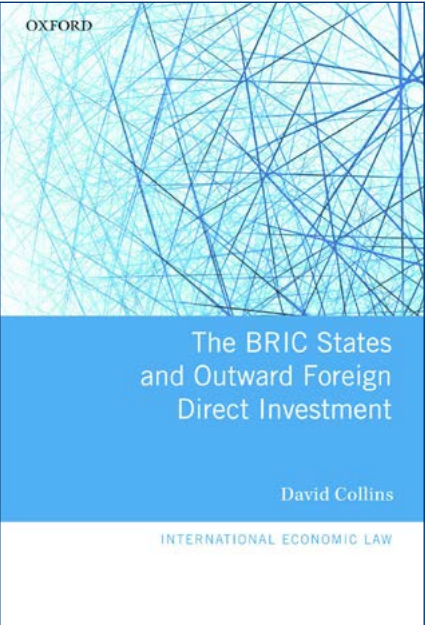
## 1993

**VALERIE OOSTERVELD, JD:** I am an associate professor at the University of Western Ontario Faculty of Law. My research and writing focus on gender issues in international criminal law. I teach Public International Law, International Organizations and International Criminal Law. I also coach the Western Law Jessup moot team. I joined the faculty in 2005; before then, I was a lawyer at the Department of Foreign Affairs in Ottawa, focusing on the creation of the International Criminal Court and other international criminal tribunals. In my volunteer life, I am a mom-to-mom breastfeeding support person with La Leche League Canada. My husband, Walter Derhak, is an architect and he will shortly become a partner in his firm, Nicholson Sheffield architects. Walter focuses on health care and institutional architecture. He and I have three children: Anna is 2, Caroline is 5 and Jasper is 10. We recently moved house, and now are starting to renovate ... again. This is the third house that we have extensively renovated, and we hope to live in it for a very long time! If you ever find yourself in London, Ontario, please be in touch. We'd love to see you. If you

would like to come to Western Law and give a talk on your area of expertise, please also be in touch. [vooster@uwo.ca](mailto:vooster@uwo.ca)

## 1999

**DAVID COLLINS, JD:** I am pleased to announce the publication of my new book: *The BRIC States and Outward Foreign Direct Investment* (Oxford University Press, 2013) which I wrote during my sabbatical at Columbia Law School. I am now a Reader at the City Law School of City University London.



## 2005

**NAOMI ZENER, LLM:** My debut novel, *Deathbed Dimes*, is going to be published and released by Iguana Books in 2014. *Deathbed Dimes* exposes the reality that if you can outlive your relatives, friends and sometimes even strangers, your odds of

hitting the inheritance jackpot are better than playing the lottery! Joely Zeller is a beautiful and ambitious 32-year-old attorney and only daughter of Hollywood film royalty, who is determined to build a successful career, find love and marriage without their help. I am very excited to become a published author! I am inviting you to like my new author page and would greatly appreciate it if you could "Like" it and once the book is available for sale, I hope you buy it. I have two Facebook pages: Naomi Elana Zener and Satirical Mama, where I post my satirical short fiction stories. You can also follow/subscribe to my fiction blog: [www.satiricalmama.blogspot.com](http://www.satiricalmama.blogspot.com). Please share my blog and FB page with everyone you know. Thanks in advance!

## 2006

**JENNIFER L. SCHULZ, SJD:** I'm an associate professor at the Faculty of Law, University of Manitoba. In 2013 I was an invited research fellow at Birkbeck School of Law, University of London and at the Faculty of Law, University of Cambridge, UK. [j.schulz@umanitoba.ca](mailto:j.schulz@umanitoba.ca)

## 2008

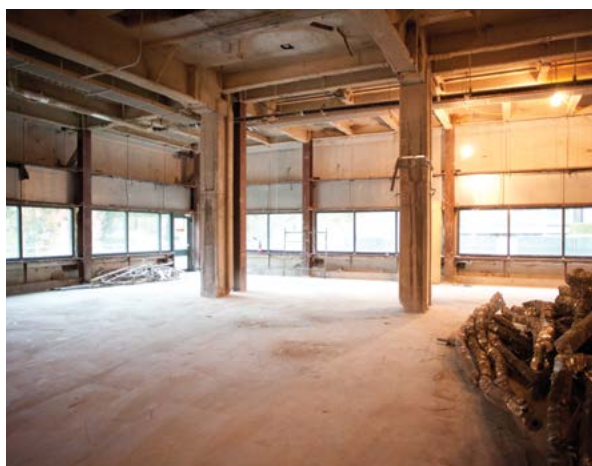
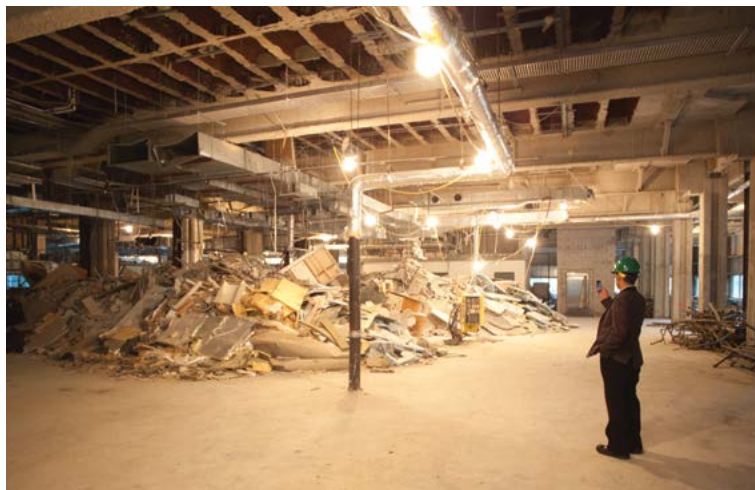
**ROHAN BROWN, JD:** I am counsel in the Justice Canada Northwest Territories Regional Office, where I have worked since September 2009. Among other fields, my practice includes litigation and providing advice to other federal departments regarding Aboriginal and environmental law. During the fantastic, but all too short, northern spring, summer and fall, I've managed to squeeze in a fair amount of fishing, canoeing, camping and exploring of the wilderness around Yellowknife and elsewhere in the Northwest Territories and Nunavut.

Send your Class Notes to:  
[nexus.magazine@utoronto.ca](mailto:nexus.magazine@utoronto.ca)



“Apocalyptic” and “full of memories.” Alumni react to a tour of the demolition site in the Bora Laskin Library, as it awaits its transformation with the construction of the imaginative Jackman Law Building.

PHOTOGRAPHY BY MICHELLE YEE



## CONGRATULATIONS TO THE 2013 RECIPIENTS OF THE DISTINGUISHED ALUMNUS AWARD

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