

nexus

The University of Toronto Faculty of Law Alumni Magazine
Spring/Summer 2011

COURTING CANADA

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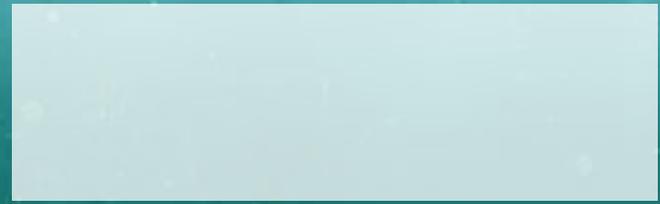
PLUS

**Building a Case Against Bountiful
Egypt Reborn
Convocation 2011**

University of Toronto Faculty of Law 84 Queen's Park, Toronto, ON M5S 2C5
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Leading beyond the law school

We've been characteristically busy these past six months, not just at the law school, but beyond the confines of academe as well. While our faculty are educating the leaders of tomorrow and our students are engaged in the learning and community building that they do so well, we're also deeply engaged beyond the University.

For example, when the polygamy issue in Bountiful, B.C. came up for examination in the courts there, our David Asper Centre for Constitutional Rights was eager to involve our students in the case to protect children's rights (p. 8 "Building a case against Bountiful"). It's just the sort of ground-breaking constitutional issue the Centre was meant to address when it was created. On the corporate side as well, our alumni are involved in some of the biggest deals of the year, as we found out in "Courting Canada," p. 14.

We also hosted a tremendously successful Access to Civil Justice Colloquium, hearing from impassioned legal luminaries from the bar, bench and community—many of them alumni—who came together from all over the world to develop solutions to bring equity and simplicity into the justice system. The soon-to-be-published book that comes out of this stellar international gathering will lead the way for significant changes on this vital issue of public importance (p.23 "Access to civil justice project moves into action mode").

As the never-ending winter finally melted into spring, we had the first completion ceremony for our Internationally Trained Lawyers Program, and we have success stories to share there too (p. 20 "Untangling the arduous road to accreditation"). It is a great tribute to its success that other law schools across Canada are now looking to emulate this program to help new Canadians with foreign credentials practice law in Canada.

And we couldn't have asked for a better Convocation Day. It was simply glorious as our students graduated and our outstanding alumnus Paul Martin received an honorary degree. It was a momentous occasion and a fitting tribute to this very special place which has educated generations of leaders in all walks of life. You can watch Paul Martin's thought-provoking address online on our YouTube channel (UTorontoLaw), and hear why he thinks the innovative Global Professional LLM program is the degree of the future.

To our newest alumni, congratulations, enjoy your first issue of the award-winning *Nexus*, and stay in touch. And to all our readers, have a restful, enjoyable summer!

A handwritten signature in black ink, appearing to be "D. Hilton".

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“This evidence was in the government’s hands back in 2008. It is shocking that despite the law, the rights of children in B.C. have not been protected.”

—**Kathy Vandergrift**

Chair, Canadian Coalition for the Rights of Children

Meet SJD student Almed Saleh,
in "Egypt Reborn"

page 11





Karen Gross

Hometown: Montreal
Now living in: San Diego
Favourite spot: Torrey Pines State Reserve in La Jolla, California
Currently reading: *The Cellist of Sarajevo* by Steven Galloway
Guest I would love to invite to a dinner party: Pierre Trudeau
Gadget I can't live without: My iPhone

Karen Gross is a longtime journalist who spent many years at the CBC as a radio and television reporter and co-host of “The World at Six.” She and her family moved to San Diego several years ago, where she worked as an anchor and program host at KPBS, the local National Public Radio station. She’s a graduate of McGill University. In her spare time, she keeps up with the news in Canada. She wrote “Egypt Reborn” on page 11.



Ian B. Lee

Hometown and currently living in: Toronto
Favourite spot in the city: The patio at Caffé Doria
Currently reading: *Goodnight Moon* by Margaret Wise Brown
Guest I would love to invite to a dinner party: Any member of CBC’s “At Issue” panel
Gadget I can't live without: There’s no gadget I can’t live without

Ian B. Lee, LLB 1994, is an associate professor at the Faculty of Law. He teaches and researches constitutional, corporate and European Union law. After graduating from this law school, he clerked with Justice Claire L’Heureux-Dubé of the Supreme Court of Canada and Justice Mark MacGuigan of the Federal Court of Appeal, and later served as a legal researcher with the Privy Council Office. In 1998, he received an LLM from Harvard Law School, and practised with Sullivan & Cromwell LLP in Paris and New York City before joining the Faculty of Law in 2003. He wrote “Two myths about corporate political speech” for our Opinions section on page 26.



Sonali Verma

Hometown: New Delhi
Now living in: Toronto
Favourite spot in the city: Our backyard deck, with the golden sunlight filtering through the lush canopy
Currently reading: *To The End of the Land* by David Grossman
Guest I would love to invite to a dinner party: Paul Simon
Gadget I cannot live without: Good old-fashioned oven

Sonali Verma is deputy investment editor at the *Globe and Mail’s* Report on Business. She has worked as a reporter, editor and producer of business news at Reuters, CNBC and Bloomberg News since 1995. Before moving to Toronto, she worked in New Delhi, London, Hong Kong, Singapore and Manila. She has been an editor at the *Globe* for three years. She wrote our cover feature, “Courting Canada” on page 14.

Corrections: In the Fall/Winter 2010 issue, the photo on the top right corner of page 25 in “A constellation of careers” was incorrectly identified; it is John Judge. And the Class Notes bio for Abbey-Jane McGrath, JD 2000, should have read “I am director of education at Pacific Business and Law Institute in Vancouver.” Nexus apologizes for the errors.

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When the polygamy reference case was up for examination in B.C., the David Asper Centre for Constitutional Rights wasn't about to sit idly by

Story by Randi Chapnik Myers / Photography by Tanja Tiziana

When Becca McConchie wrote the LSAT, she figured the degree would come in handy in any career. “I didn’t know how much I would like practicing law,” says the University of Toronto law student, who knew her decision to try her hand at litigation was the right one when she found herself inside the British Columbia Supreme Court, helping to make history.

It all started last September when McConchie enrolled in the course “Clinical Legal Education: Constitutional Advocacy” held at the Faculty of Law’s David Asper Centre for Constitutional Rights. The centre’s legal clinic gives third-year students the chance to work on groundbreaking constitutional cases that invoke the Canadian Charter of Rights and Freedoms to promote social justice.

As it happened, the constitutionality of section 293 of the Criminal Code of Canada—which makes the practice of polygamy a crime—was up for examination at just that time. And when teacher Cheryl Milne, the Asper Centre’s executive director, stepped up to act as co-counsel in the case, she needed lots of help from her students.

Despite the law banning multiple marriages, the members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints, the break-away Mormon sect in the southeastern B.C. town known as Bountiful, are famous for their polygamous lifestyle. After the prosecution of two of the community’s leaders failed, the government set out to determine, once and for all, whether polygamy is a protected religious freedom or a crime.

In a unique move, the constitutional reference would be held in an open B.C. trial court before Chief Justice Robert Bauman, who would decide the case using a hybrid of affidavits and cross-examinations. To make matters even more exciting, the Asper Centre joined forces with the Canadian Coalition for the Rights of Children (CCRC), based in Ottawa, to intervene as interested parties.

Milne rallied in favour of the legislation on the grounds that the practice of polygamy violates children’s rights, and accordingly, a law prohibiting it is justified. On the other side, the court-appointed *amicus curiae* argued that the law undermines freedom of religion and should be struck down.

“Lifting the law against polygamy would violate Canada’s international obligations,” Milne says. Specifically, the Canadian Charter of Rights and Freedoms and the UN Convention on the Rights of the Child require Canada to protect children from the harms associated with polygamy.

“There has been a reluctance to intervene in Bountiful on the grounds of the religious freedom of adults at the expense of the rights of the children who live there,” Milne says. Not only has the funding of the independent school system failed to meet kids’ educational needs, but there is also undeniable evidence of sexual abuse of children within the community, she points out.

To help build the Asper Centre’s case, Milne selected five students to help sift through thousands of pages of evidence. In addition to summarizing vital statistics documenting the number of Bountiful high school graduates, the marriage ages for girls, teenage birth rates, and sexual exploitation of child brides, they also researched Canadian labour, marriage, and child welfare laws and international laws relating to polygamy.

Kathy Vandergrift, chair of the CCRC, was delighted with the students’ involvement. “They helped us to keep putting children’s rights on the agenda as the case moved forward,” she says. Although the detailed work—reviewing page after page to make sure that each reference to children was noted—could be tedious at times, it paid off.

“The B.C. government finally agreed to review the statistics, and as

a result, we were able to table evidence of eight children trafficked,” Vandergrift says.

The most disturbing case was that of two 12-year-old girls who had been removed from Bountiful, shipped to Texas and married off to Warren Jeffs, the U.S. polygamist leader facing sexual exploitation charges. “This evidence was in the government’s hands back in 2008. It is shocking that despite the law, the rights of children in B.C. have not been protected,” Vandergrift says.

Reviewing the evidence was enlightening, McConchie says. “In law school, everything you learn is at arms length. But here, you’re not just hearing about the rights to freedom of expression and religion, you are reading affidavits, and seeing firsthand how these rights affect people.”

After the evidentiary stage of the proceedings, it was time for the courtroom drama, which coincided with the option of a practicum at the Asper Centre. Some of the students, including McConchie, Kathryn McGoldrick and Will Morrison, signed on and took turns flying to Vancouver with Milne to watch the action unfold.

McGoldrick was present for Milne’s cross-examination of Angela Campbell, a McGill University professor who was called by the amicus. “She had interviewed women in Bountiful and found some of them stated that they do in fact have some free choice regarding marriage, sexuality and reproduction,” McGoldrick says.

Campbell had submitted a qualitative study based on her interviews, but the government requested disclosure of her notes before cross-examination. The judge agreed, subject to a sealing order. To keep the women’s identities protected, only those cross-examining Campbell were privy to the transcriptions. Together, Milne and McGoldrick spent a full weekend digging through the notes, drumming up questions for Campbell. “It was an engaging process, but we had to maintain strict confidentiality of those documents,” Milne says.

The experience was eye-opening for McGoldrick. “I learned just how much time and effort goes into preparing a cross of an expert witness,” she says. “Because our position is protecting children’s rights, we had to really zero in on what we would ask to draw that out.” At the same time, it was a lesson in thoroughness, Milne says. “You never take a study at face value because what’s in the notes may not be reflected in the witness’ conclusion.”

Will Morrison will never forget the feeling of sitting in that packed courtroom. “The amount of human capital involved in a piece of litigation of this scale is enormous,” he says. He took notes as two witnesses testified, including Prof. Rebecca Cook, who holds the chair in international human rights law at U of T.

Called as an expert witness for the AG, Cook was examined on a report she co-authored in 2010, called *State Obligations to Eliminate Polygyny under International Law*, as well as the developments in human rights law since that time.

“International human rights deals with polygyny—one man marrying many wives—not polygamy, which refers to either spouse with multiple partners,” Cook explains. She testified that in the last decade, there has been a clear trend in international law toward limiting and prohibiting polygynous relationships in order to protect the equal rights of women in family life.

As examples, she cited the 2009 decision by the South African constitutional court that gives women in polygynous Muslim marriages the same inheritance rights as monogamous wives, and the 2007 Indonesian judgment that upheld the requirement for a man to obtain consent from his first wife in order to marry a second. In Canada and Australia, the immigration policy has recently changed, Cook says. Now, a polygynous man can immigrate with his first wife

The Other Argument

By Randi Chapnik Myers

Asked about the harms associated with polygamy under Islamic law, Professor Anver Emon submitted a statement of expert witness to the amicus.

His conclusion: Criminalizing an act associated with a particular community can lead to stigmatization and could undermine the well-being of that community.

The Argument

↑ Islamic law allows men to marry up to four wives, as long as he treats them equally. There is, however, scant empirical data on polygamous Muslim marriages in North America.

↑ The evidence used to show harm came from studies of polygamous women in rural, tribal societies that have no bearing on what life is like for Canadian Muslim women. Using that evidence to criminalize the practice of polygamy sends an unfortunate message that Canada’s Muslims are “other” and not “us”.

↑ Condemning a practice associated with an identifiable community in this way may contribute to a political climate of antagonism toward it.

only, and must first show proof that he is legally divorced to all subsequent wives.

Testifying at such a high profile hearing was exciting, Cook says. While ethical walls prohibited her from discussing the case before she testified, she was eager to review the affidavits submitted by her colleagues once they formed part of the public record.

She particularly enjoyed the submissions of Professors Anver Emon and Mohammad Fadel, U of T law professors who are scholars in Islamic legal history. At the request of the amicus, they each provided overviews of polygamy in Islamic law and its practice among Muslims in Canada. Cook found their perspectives fascinating.

“The case is a jigsaw puzzle, and for a time, I just focused on my own little piece,” she says. But now that the law school has held two workshops featuring all of the U of T players, she sees that the polygamy question provides a valuable opportunity for discussion.

Even Milne and her students have swayed between the two sides. “There’s the issue of fundamental freedom of choice in a marital arrangement but then there are the negative impacts on children that accompany that choice,” Milne says.

“The issue brings up gut reactions,” McConchie says. “There are so many different litigation styles, so many ways to debate, and so many people affected.”

As for McGoldrick, she begins her clerkship at the B.C. Court of Appeal this September. Although she secretly hopes that the trial decision in the polygamy case will arrive at the appeal court while she is there, she knows that’s wishful thinking.

“This proceeding was a massive undertaking, with volumes of evidence, and so many sections of the Charter being invoked. There are many, many legal issues for the judge to review,” she says.

In the meantime, while Morrison heads to the Ontario Ministry of the Attorney General’s constitutional law branch for his articles, McConchie will join the criminal law group at Sack Goldblatt Mitchell LLP. She can hardly wait to wear her robes in court. “For me, this case wasn’t just about the law, but about its impact on different groups of people in the world,” she says. “I had no idea how exciting my career could be.”

EGYPT REBORN

Students, alumni and faculty connected to Egypt are elated, apprehensive—and hopeful—about what happens next

Story by Karen Gross / Photography by Faiz Dz



SJD student Ahmed Saleh was No. 2 in command during the online revolution



As a small child in Alexandria, Egypt, Ahmed Saleh would comb the vast collection of books in the family home, and read whatever fell into his hands. His father, a practicing lawyer and avid reader, amassed a huge library which included countless texts about Egyptian law, crime, and punishment.

“One of the books that I couldn’t forget reading was about torture at the time of [President Gamal Abdel] Nasser,” Saleh remembers. “I was very young at the time, maybe just starting to read. And the descriptions are engraved in my mind until now.”

Those haunting images ignited a passion in Saleh that would ultimately take him to the centre of the Egyptian revolution, his hunger for a society free of torture and repression so consuming that he would risk his life for the cause.

A doctoral candidate at the Faculty of Law, Saleh had returned to Egypt to organize for former diplomat Mohamed ElBaradei, and to work on his dissertation. Politically active and extremely tech-savvy, he became one of five anonymous administrators of the ubiquitous Facebook page that inspired the January 25, 2011 uprising. Assuming the name of a young torture victim, the page was called “We are all Khaled Said.” When its founder, Google marketing executive Wael Ghonim, was arrested at a café in Cairo, Saleh took over—essentially managing the revolution from his computer.

“During the revolution, when I received the admin password, I thought, ‘I don’t want to do that,’” he recalls. “It was very difficult to take this responsibility, seeing half a million people waiting for what I had to say.” Reluctant as he may have been, Saleh managed to not only keep the page running, but to revive popular support, which had begun to flag when the government cut the public’s Internet access and then began flooding the page with anti-revolutionary rhetoric.

It would be too much, he says, to credit the Facebook page entirely with igniting such passion and determination among the Egyptian people. Saleh believes that honour belongs to the Tunisians, who set the stage first with their stunning popular success. But he does feel that the revolution would have been very different without it.

“It wouldn’t have happened as peacefully,” Saleh says. “It would have started with some clashes, people dying. But millions coming out, staying there until it was over—it wouldn’t have happened like this. It prevented all the forces from even thinking about a confrontation.”

Khaled Beydoun, LL.M. 2008, had been following the online chatter for some time and found himself in Cairo’s Tahrir Square almost by

accident on January 25th, the day it all began. The Washington, D.C. consultant had been travelling in Lebanon on business, and passed through Egypt, where he was born, to see friends and family. Beydoun’s expectations were low. The many summers he’d spent visiting the country in his youth, among what he saw as an oppressed and largely apathetic people, left him unprepared for the powerful show he was about to witness.

“There was little dissent up until that day,” Beydoun recalls. “And in one fell swoop, that was all changed. People took to the street, marched, and it was as if they were letting out what they had built up inside for so many years.”

Beydoun had to leave Egypt the next day, but what he experienced on the 25th and the perseverance of Egyptians over the following weeks, left him a changed man. “I was resigned to the notion that change was not going to happen,” he says. “But after the revolution, it spurred this optimism, this rejuvenated perspective of the region that ‘Hey, if a revolution and considerable change could happen within 18 days, then a genuine sustainable democracy can be had in time.’”

Back in Washington, Beydoun and some friends established a website called FreeEgyptNow.org. The interest it sparked, not just among Egyptian-Americans, prompted them to widen their reach, creating DAWN, Democracy in the Arab World Now (arabdawn.org). The small group runs a growing media awareness effort, and aims to clear up what Beydoun calls common misperceptions about the Arab Middle East. In the past few months, he has been interviewed by the BBC, NBC, Al Jazeera, and Voice of America, among others.

“The people in the Arab world have the same needs and desires as people in the United States and in Canada,” he says. “They want the ability to speak freely, they want the ability to exercise their faith, to pursue jobs that are adequate and that provide meaningful resources for their families.”

Eventually, Beydoun hopes to do some advocacy and lobbying as well, but he says so far he is satisfied with his little group’s efforts, given their limited manpower and shoestring budget. “We’ve been able to actively address what’s taking place in the region,” Beydoun says, “while other established Arab American organizations have been silent.” He adds that DAWN has filled a void that left a lot of people frustrated.

First-year law student Eva Taché-Green was deeply affected as well. She spent three years in Egypt, mainly working with refugees, began learning Arabic, and developed many close friendships and contacts there. Taché-Green followed the first weeks of the revolution from



Toronto, glued to the Internet.

“It was completely unexpected,” she remembers. “We were so caught off-guard. The fact that so many people went out that first day made me think something was finally going to happen.” Coincidentally, Taché-Green had planned a February vacation in Egypt months earlier, and she boarded her plane with a mixture of apprehension and anticipation. It was her taxi driver in Cairo who gave her the news. President Hosni Mubarak had stepped down just 20 minutes earlier.

“I didn’t believe it at first,” she says. “And then I was jubilant. I was laughing, I was crying, I was so incredibly happy. And then to drive through the streets it felt so surreal, like a dream. Sort of like a Hollywood version of a revolution. And to be there in the middle of it was just amazing.”

There were some dark moments, though, reminders that despite the euphoria Egypt had not transformed overnight. Taché-Green recalls one evening when she and a woman friend broke curfew, along with two Egyptian-Canadian doctors. “We were very badly treated by the military at the checkpoint,” she recalls, and says a commander tried to become inappropriate with the women. They were eventually released and Taché-Green downplays the incident, saying it wouldn’t have happened if she’d been off the streets by midnight.

Reflecting back on it now, Taché-Green believes it would be unrealistic to expect Egypt to produce a perfect democracy anytime soon. In fact, she expects the months ahead to be challenging, but remains very positive. “I like the fact that it’s messy as long as people stay involved,” she says. “And if people start becoming apathetic again, then I’m going to get worried.”

Mai Taha, a 26-year-old SJD candidate living in Toronto, is already worried. Born and raised in Cairo, Taha’s entire family is in Egypt, and they tell her the revolution is all people talk about. But now that Mubarak is gone, she’s wondering what all that talking will lead to. Picky debates over constitutional sub-amendments, and technical discussions about the upcoming elections, Taha believes, will not solve Egypt’s most pressing problems—massive poverty and social and economic inequality. “This is where it becomes difficult,” she says. “Because now you have a moment where Mubarak is gone. So what do we do next? This is basically the uncertainty that’s going on now.”

The key challenge, according to Mohammad Fadel, assistant professor in the Faculty of Law, is to keep Egyptians engaged, to mobilize people across social and economic boundaries and in every corner of the

country. Fadel, an Egyptian-American, has close family ties in the country and has written and been interviewed widely on the subject. Free and fair elections are a first step, he says, but the real work lies in merging what are now conflicting interests into what he calls a social democratic coalition.

“If the wealthy or the upwardly mobile professional classes aren’t willing to subsidize a robust social welfare state,” Fadel warns, “then you’re going to have increasing labour unrest, increasing social unrest, and eventually people will be clamouring for a security state again.”

Still, Fadel is more hopeful than fearful. The situation in Egypt has been so dire for so long, he says, there’s really no direction to move but forward. “What people need to see is that there’s going to be real accountability. The government’s going to be accountable to the people. Once that happens,” Fadel says, “then we need to start looking for the substantive laws they start passing.”

In Cairo, Ahmed Saleh, online revolutionary, is doing his best to maintain the momentum. Now a national field director for the presidential campaign of Mohamed ElBaradei, Saleh continues to help run the Facebook page that moved history. The administrators are no longer anonymous. Everyone knows who they are. And with those early descriptions of torture victims still seared in his mind, Saleh is absolutely committed to realizing the revolution’s promise. “I’m very optimistic,” he smiles, still seeming giddy with amazement. “I think we’re going to make it.”

People are even beginning to criticize the army—something unheard of just months ago. But Saleh is realistic too. Political change takes time, he says, and the time between now and September’s parliamentary elections is short. “Fifty years of prohibiting five people from gathering is not going to be resolved in five months,” he observes. “You’re not going to form a new political party that has candidates around the country in five months.”

In the meantime, Saleh says Egyptians are forging ahead, emboldened by their initial victory and invigorated by their newfound voice. “The police right now are under very close watch by the people,” he says. “If a policeman is holding someone, people will go and see what’s going on. If it’s legitimate, they will let him do it and if it’s not, they will not let him do it.”

No longer, he says, are the people of Egypt just waiting for things to happen. For the first time in decades they can see a path to something better. And wherever it leads will be up to them. ↙



Tory LLP's Jamie Scarlett: Blocking foreign buyers can have repercussions, as Canada is also shopping abroad.



COURTING CANADA

**Global investors are hot for Canada, keeping M&A lawyers busy.
How long will the good times last?**

Story by Sonali Verma / Photography by Jeff Kirk

There are two bubbling sounds in the offices of Bay Street law firms these days. One is the baritone burble of coffee makers late into the night as young lawyers work feverishly over a slew of merger and acquisition cases. The second comes much later—the quieter, sibilant fizz of champagne to celebrate the resurgence in takeovers.

“There’s certainly a lot of M&A activity,” says Jean Fraser, JD 1975, partner, corporate, at Osler, Hoskin & Harcourt LLP. “Your phone rings more often. You always have more deals on your desk than you did last year.”

Sharon Geraghty, partner at Torys LLP, agrees, pointing out that M&A mania sometimes verges on the ridiculous.

“First, Inmet wants to merge with Lundin. Then Equinox bids for Lundin. Then Minmetals bids for Equinox. Then Barrick bids for Equinox,” she says, rattling off names of mining companies involved in what was ultimately a US\$7.7-billion deal.

“You just have to look at that and laugh: companies are falling over themselves to scoop up these deals to the point where there are multiple offers for the same company.” (She had barely finished saying this when a consortium of Chinese bidders stepped up and threw its hat into the ring as well.)

The reasons for the revival in deal-making are simple. The recovering global economy has swept commodity prices higher and resource-

totaled \$177-billion, according to Thomson Reuters data. That compares with \$146-billion a year earlier. The biggest deals included Toronto Dominion Bank’s \$6.3-billion purchase of Chrysler Financial, Kinross Gold’s \$6.1-billion acquisition of Red Back Mining and Sinopec’s \$4.7-billion stake in Syncrude.

The twin themes that dominated the year just past were mining and marketplace consolidation. They appear closely intertwined in the most high-profile case of 2011 as well: The London Stock Exchange Group Plc’s proposal to take over the TMX Group, which runs the Toronto Stock Exchange. And since then, Maple Group Acquisition Corp., a consortium of Canadian banks, pension funds and financials, has also launched a bid.

“It is staggering how large the TSX is,” says Scarlett. “If you take out the biggest four or five mining companies on the London Stock Exchange, its market capitalization of mining issuers would be smaller than Toronto’s.”

The proposed deal reflects the international community’s growing hunger for resource companies, for which Canada has earned a global reputation as a powerhouse. Not bad for a country with a longstanding history of being exploited as ‘hewers of wood and drawers of water.’ But it’s also a story about survival and competitiveness for the two exchanges.

“The great strength of TMX in the natural resource space was a

“Canada has more people who are willing to take a punt on new projects. Some lose and some win, but those who win, win big.”

—Jamie Scarlett

rich Canada’s fortunes with them. Resource producers are flush with cash, and companies are more comfortable taking on debt and issuing equity to finance acquisitions because growth appears more certain than it did three years ago.

And Clay Horner, LLB 1983, chair of Osler, says it’s only just starting. “One reason we’re seeing a lot of M&A is, for a couple of years, we saw very little. Companies are getting on with growth plans and strategies, as the world continues to internationalize at a great rate.” And the outlook appears robust as well, says Horner. “It reflects pent-up demand for transactions that didn’t get done because of the financial crisis.”

That’s because credit had dried up for all but the biggest companies in 2008 and 2009, and uncertainty over when a recovery might take place made buyers wary of pulling out their wallets.

“In the market meltdown, you couldn’t get anyone to finance an acquisition,” says Jamie Scarlett, JD 1981, co-head of the mining practice at Torys. “Secondly, there was the problem with values. It was like selling your house in a falling market—you are always pricing it wrong. You couldn’t get heads together on price.”

Two years later, markets appear more stable and companies more confident. And it is corporate Canada and its advisers that are the biggest beneficiaries. In 2010, mergers and acquisitions in Canada

tremendous attraction for the LSE. Canada has done a very good job of creating a space for natural resource companies, where they can thrive,” Horner says.

And it’s not just Canadian companies that the LSE is after. Almost 200 of the listings on the Toronto Stock Exchange or the Venture Exchange don’t even have operations in Canada, Scarlett points out. Their management teams and mines are in Australia, Africa or other resource-producing regions.

Yet it is a listing in Toronto that draws them like a magnet. Trading on the Toronto Stock Exchange is likely to translate into an analyst following as well as providing several comparable peers, which makes it easier for resource plays to attract investors.

“The market is seen as being receptive to small new companies. Canada has more people who are willing to take a punt on new projects. Some lose and some win, but those who win, win big,” Scarlett says.

And with more than half of the world’s publicly-listed mining companies traded on the TSX, it’s no wonder strategic buyers are looking to Canada, says Richard Clark, JD 1974, chair of Stikeman Elliott LLP’s Toronto mergers and acquisitions/private equity group.

Increasing demand for natural resources from China, India and most industrialized economies amid limited supply is only stoking investors’ appetites. “It’s easier and usually cheaper to buy through



Keep the coffee percolating, says Clay Horner, chair of Osler: “One reason we’re seeing a lot of M&A is, for a couple of years, we saw very little.”

M&A transactions than develop it yourself,” he says.

Clark points to India’s Tata Group, one of the world’s largest steel producers, and its recent decision to help New Millennium Capital Corp. develop some of its iron ore properties in Quebec and Labrador. That came weeks after its rival ArcelorMittal won control of iron ore deposits in Nunavut that had been owned by Baffinland Iron Mines Corp.

And control is the point, Scarlett says. “The resources sector is incredibly international. What are the Chinese investing in? What about the sovereign wealth funds from the Middle East? They are all putting money into oil and gas and commodities and agriculture. You have to feed people.”

It’s a win-win situation, because Canada has the resource-rich land mass that appeals to those with the capital to exploit it. “That has to come from somewhere,” he adds.

And although it’s the mega deals that grab headlines, the hallmark of the mining sector has been smaller deals, which have come roaring back, says Neill May, LLB 1990, partner at Goodmans LLP.

“In the mid-tier and junior level, activity has been phenomenal,” May says, citing conferences held “for the sole, unvarnished purpose” of sourcing, soliciting and sealing the deal, sort of sector-specific speed-dating events for companies. Miners that miss out on finding a match at one conference are always primping themselves for the next, while even those that score a partner are perpetually on the lookout for another.

Opportunities abound, but foreign buyers can be in for a rough ride. Case in point—the one that didn’t make it past regulators in 2010: BHP Billiton’s \$38.6-billion proposal to buy Potash Corp. of Saskatchewan. The government rejected it on the grounds that it was a strategic asset that should not be controlled by foreign companies.

This has now made the politics of approval an important issue for any prospective buyer.

“From the perspective of the legal industry, the BHP-Potash transaction puts a premium on not only structuring a transaction properly financially but on positioning it properly and dealing with political and regulatory issues way out front,” says May. “It puts a premium on getting competent and capable advisers engaged early in the process.”

The BHP-Potash case should serve as a warning to the LSE Group, he says. “Potash is a unique issue in the political environment of Saskatchewan. The TMX Group is a unique animal in the Ontario and Canadian landscape.”

The other point to keep in mind is foreign mergers and acquisitions are a two-way street, Scarlett says. Canada needs to be careful about putting up walls, because Canadian companies are also shopping abroad.

“Should we let strategic or cultural assets fall into the hands of foreigners? Of course not,” he says. “But what is strategic or cultural? It’s a good debate to have. Potash Corp. didn’t seem strategic to the government of Saskatchewan when they privatized it.”

Still, the debate over foreign acquisitions is long overdue, Horner says. “We were late to the party of thinking strategically about economic advantages. Whether it is the BHP Billiton-Potash case or the LSE-TMX case, there is a lot of debate and commentary, and that’s a terrific thing.”

making in the latest round of deals. “It’s pretty busy, but I’d like to think that the experiences of the last Great Recession left everybody involved in the financial business generally aware of what can happen,” she says.

Yet buyers can sometimes get carried away by the possibilities, as the money being thrown at Equinox has shown. Many observers believe that Barrick Gold, whose bid was the eventual winner, paid a rich premium for the copper miner and that it will have to eat crow if copper prices fall steadily, as is widely expected, over the next five years.

“It is a little harder to find the values you want after the bull run we’ve had. Assets could be too expensive. There is always a price to buy a company that is too much,” Scarlett says. “When buyers start talking about strategic value, it may mean ‘I’ve paid more than the economic assessment said I should have.’”

May points out that deal-making momentum seems to take on a life of its own as bidders put more and more money on the table, setting expectations even higher for takeovers that follow. “A high level of activity often begets a higher level of activity. It may just be history feeding expectations,” he says.

Torys’ Geraghty agrees deals can sometimes get out of hand. “There is this constant feeling of ‘This is something big that I’m working on’—and then it gets trumped,” she says. “It reminds me of



“A high level of activity often begets a higher level of activity. It may just be history feeding expectations.”

—Neill May



And the government’s decision to reject the BHP-Potash marriage won’t put a damper on other mining companies’ ambitions, May says. “There is no obvious abatement on the horizon,” he points out, citing a crush of deals that are already in the pipeline, at various stages of completion.

The Potash proposal, which signaled a great revival in acquisitions, appears to have set the stage for the year ahead as well. A Blake, Cassels & Graydon LLP report says concerns over food scarcity will make agricultural commodities and fertilizer—and the Canadian companies that produce them—increasingly attractive. The pursuit of deals worth more than a billion dollars will continue to strengthen, even though smaller transactions made up 90 per cent of the deals struck in 2010.

But even mega-deals will be a little smaller than the Potash case, Scarlett says. “You won’t see a lot of deals the size of Potash, simply because there aren’t a lot of deals the size of Potash. Will we see a large number of \$1-billion to \$5-billion deals? If the market for commodities stays strong, we will,” he says.

If it reminds M&A lawyers of the euphoria that surrounded takeover activity at its peak about a decade ago, fresher memories of the financial crisis should make companies more circumspect. Osler’s Fraser says she has seen “sensible and more disciplined” decision-

making in the latest round of deals. “It’s pretty busy, but I’d like to think that the experiences of the last Great Recession left everybody involved in the financial business generally aware of what can happen,” she says.

One deal that few M&A lawyers themselves had imagined was a merger in the legal industry earlier this year, when iconic Montreal-based national law firm Ogilvy Renault LLP agreed to combine with London’s Norton Rose.

The merger sparked rumours of similar agreements across the legal industry, with Baltimore-based giant DLA Piper LLP, Chicago-based Baker & McKenzie LLP and Britain’s Clyde & Co LLP all indicating interest in Canada.

This has renewed debate over whether a standalone Canadian legal market is sustainable, May says. “Our economy and our market participants are obviously integrated with their counterparts across the border. A very small industry has sustained an independent legal system.”

But for now, Bay Street’s lawyers are holding their own, rolling up their sleeves—and keeping the coffee brewing—as the international deals roll in.

“Everybody works harder,” Fraser says. “You just grind it out, harder and faster, and you delegate more. A lot gets pushed down to relatively young people—which is terrific for associate lawyers. They get really great experience in a hell of a hurry.”

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Untangling the arduous road to accreditation

The law school's innovative program for internationally trained lawyers ends its first year with challenges, determination—and success stories

Story by Shree Paradkar

On any given day, lawyers Gurpreet Shergill, Maureen Bennett Henry and Adil Hirani are likely to be polishing up their resumes, working the telephones, knocking on doors and interviewing, interviewing, interviewing. One of their classmates has already found an articling position and the pressure—personal, societal and financial—is on them to gain entry in the formidably challenging field of law in Canada.

They are but three students from a group of 47, mostly immigrants from 21 countries, brought together by a unique pilot program at U of T. The Internationally Trained Lawyers Program (ITLP) opened its doors to students in May 2010 to assist foreign-trained lawyers seeking to practice law in Ontario. Career adviser Jane Price, who helped to launch it, calls it “a gigantic step” in the field of law. “I’m very optimistic about its impact on the profession.”

On the one side is a profession whose practitioners—on the whole—don’t look like the diverse clients they represent. On the other are diverse folks arriving with qualifications but not the “Canadian experience” or know-how to practice here without jumping through a few hoops first. These range from challenge exams with particularly low passing rates to finding articling positions without a network of contacts. Add to these the usual settlement issues of moving one’s life to a new country, and the stress levels keep building.

It’s not that the barriers to entry in the profession are unnecessary. But, says Price “We have encouraged professional immigrants to come to Canada, and then provide no way to make use of their training. This is a recipe for unhappiness and disillusionment, and not a very productive use of people.”

ITLP director Gina Alexandris is equally blunt: “I’m not sure how an immigrant can get experience here ... It would be very difficult for a lawyer not familiar with the system to get Canadian work experience.”

Student Karena Cui, 35, who emigrated from China two years ago, says her inability to get a job is due to her lack of experience here. It’s also a different legal system, she says; a civil law system in China versus a common law system here that makes it very difficult for Chinese to pursue law in Canada.

“There are very, very few Chinese lawyers practicing in Canada,” says Price, who argues that lawyers with cultural affinity to a

segment of the population would draw people to a legal system that is otherwise not easily accessible to them.

This is where the ITLP, which received a \$4 million grant from the Government of Ontario in June 2009 steps in. For \$3,500, it trains qualified students for the National Committee of Accreditation exams and educates them about the licensure process. It’s a 10-month program combining academic training and unpaid internship.

At the group’s celebration of completion in March, valedictorian Shahrina Salam said, “This was the toughest and also the most rewarding 10 months I have ever lived.”

The training includes coaching for the challenge exams, dealing with career development issues, and participating in seminars and workshops with professionals. Sure, the newcomers can study for the NCA exams on their own, but students speak of classroom synergy and teacher feedback as essential tools to the learning process.

“The experience we got through the program—including exposure to communication skills and English language skills—has been very valuable,” says Gurpreet Shergill, 48, who went to law school at India’s Panjab University. “We would not have been able to find the resources available to us without the program.”

For Maureen Bennett Henry, lacking the right connections was a challenge to jump-starting her law career in Canada. “The program has helped us to open doors in terms of our networking. The exposure the program gave us to the profession has been tremendous.” Prior to doing the course, she says, “We didn’t know some of the processes, we didn’t know places to go, where to look for support.”

She values, for instance, the Faculty of Law arranging student access to Supreme Court hearings and meetings with judges before attending sessions in court.

Henry is a case study in determination. She graduated from law school in Jamaica at the University of the West Indies (Mona). When she came here to get her equivalency, she was assessed by the NCA and asked to do nine challenge exams. She needed a study break. But the bank she worked at did not grant her a five-month break, even without pay. She decided to leave her job to do the ITLP.

During the course of the program, she lost her husband, her companion of 19 years, to stomach cancer. And she battled emotional



Photograph: Michelle Yee

Nirav Bhatt says the ITLP helped him gain Canadian experience, "the most fundamental of contributions."



Determined to succeed: Maureen Bennett Henry

and financial crises while taking care of her six-year-old daughter. There were times, she says, when she didn't have enough money to buy a GO Transit pass.

But she says, "God opened doors I didn't even know existed. Things just worked in supernatural ways." Her sister and other family members helped her with money, and she hunkered down to do her exams and the internship.

"I keep telling myself, once we get accredited, once we are called to the bar, we will be fine," she says.

The theme of help from family is repeated with Shergill, whose brother and sister are supporting him financially while he studies and applies for jobs.

At the crux of the ITLP is the internship at workplaces to give students exposure to critical "Canadian experience."

Nirav Bhatt, 25, a student who landed an articling position at a small firm in the Brampton area, can't emphasize enough the role of the internship in his success.

"The program helped me to get Canadian experience ... the most fundamental of contributions," Bhatt says he would not have received the exposure to as many as eight internship interviews were it not for the ITLP.

The internships place emphasis on research and writing skills that are uniquely Canadian. Shergill says he would have liked more training to be productive and more effective at internships. "In India, with litigation courts, there is hardly any memo writing. The tools there are different—most research is still done via books and legal journals."

Henry was familiar with the research tools, having used them in Jamaica. But she found the writing style different. "It is a lot more concise ... stronger and crisper" than what she was used to.

Price agrees. There is no room for "flowery" writing, she says. "Legal memos are quite distinct. The language is more succinct. There is not a lot of background analysis ... it's very distilled."

Despite these challenges, Lucille D'Souza, senior counsel at RBC, where Henry and Shergill did their internships, says, "These students were extremely well-prepared with a solid knowledge of Canadian legal principles and the ability to jump into any research or drafting project that they were assigned."

While setting up the internships, program co-ordinators were thrilled to find firms stepping up, firms such as Blake, Cassels & Graydon LLP. That's where Canadian-born Adil Hirani, 32, who studied law at the University of the Witwatersrand at Johannesburg, South Africa, landed.

Hirani practiced for two years at Webber Wentzel, a top tier South African law firm. He returned to Canada in 2009 and his assessment by the NCA required him to do nine challenge exams. "My single qualification (LLB) didn't allow me to work here," he says.

For him, an internship meant an otherwise inaccessible opportunity to be on Bay St., even if it also meant slogging it out seven days a week, knowing the firm was not hiring. "You have to be committed to being a lawyer," he says, "I've had to put my life on hold (to give it a chance)."

His research skills were considered below par compared to the articling students at Blakes at first, which he says he recovered with training, and his drafting skills and opinion work were above average.

While Hirani's workplace challenges were profession-related, workplace differences can also be cultural, says career adviser Price. "There are different perceptions about the role of students. 'Shopping for jobs' where you actively seek out work is common here, but for students from other cultures, it might seem pushy."

There are also differences in degrees of hierarchy. Students "won't necessarily play the devil's advocate, and a supervisor might think the person is being passive, when in fact they are just being polite."

To that end, the program also has a half day of training with host supervisors on cross-cultural conflicts and issues.

Cultural differences also posed an interesting challenge for ITLP teachers. Kubes Navaratnam, a teaching assistant for the legal ethics and professional responsibility course, says his biggest challenge was the diverse set of assumptions underlying students' interpretation of Canadian law. "These varying unspoken assumptions often presented challenges in our discussions, because students were not always aware of the premise of another's argument."

The concept of "shades of grey" in Canadian law proved to be the biggest learning curve that most students had to overcome, he says. The teachers focussed the students' attention on identifying issues and the applicable law in a given scenario, rather than finding the right answer. They worked on making students comfortable with the notion that there might not be a right answer.

At the end of the program, two of the students have landed jobs—one in an articling position, the other in communications work for a law firm. For the rest, the program has filled them with optimism and the knowledge that they'll be making informed decisions.

Karena Cui credits the program for familiarizing her with the Canadian legal system, and opening her eyes to all the possibilities in the legal field. Having considered her options, she has decided to change course.

"I will complete a paralegal program and get my diploma this October, then take the paralegal licensing examination next February."

For Shergill, Henry and Hirani, the search continues to find articling positions. Their classmate Bhatt has one piece of advice. "Attend all or any networking sessions."

One thing is certain. They won't give up. ↙



Access to civil justice project moves into action mode

Book has ‘concrete agenda for change’

Story by Lucianna Ciccocioppo / Illustration by Gracia Lam

In her strongly worded keynote address at the Access to Civil Justice Colloquium earlier this year, which garnered headlines in the *Globe & Mail*, and in editorials across Canada, Chief Justice Beverly McLachlin argued it was high time for solutions to this long-standing problem affecting the majority of Canadians.

“People expect they can turn to the legal system for a resolution,” said McLachlin. “They are ‘hard-wired’ for justice ... but there is no justice without access to justice.”

McLachlin argued for a multi-pronged solution, involving government (streamlined processes), the bar (developing a public interest bar), the judiciary (quick decisions) and the academy (teaching about access to justice).

“There is no silver bullet,” said McLachlin. “We have to commit ourselves to working on this issue. I look forward to hearing what has been accomplished at this colloquium.”

She soon will. McLachlin is writing the foreword to the Faculty of Law’s book, *Middle Income Access to Justice* (Michael Trebilcock, Anthony Duggan and Lorne Sossin, eds.). The book, published by University of Toronto Press and due out by the end of 2011, is a culmination of the ideas, strategies and concrete solutions emanating from the colloquium, and the pinnacle of a multi-year and innovative initiative launched at the law school.

The project tapped into the brightest legal minds in the academy, profession and legal organizations across Canada, the U.S. and over-seas to effect change in the legal landscape for Canadians caught in the middle—too rich to receive public legal aid, not rich enough to afford legal fees.

Current strategies in use in the U.K. and the U.S., such as community advice bureaus, non-lawyer forms of assistance, and legal insurance plans were also part of the research. The colloquium focused on the three hot-topic areas of family, consumer/debtor-creditor and employment law.

“We now have a concrete agenda for change,” says Prof. Tony Duggan. “We’ll be sure to place the book with everyone who is influential in this area, and who can continue the debates raised in the book.” And there are many: 25 contributors from the bar, bench and academy have lent their voices to argue for changes.

Duggan mentions one short-term solution in particular: a unified Family Law Court. Family law issues were cited numerous times during the colloquium, which did not go unnoticed by Ontario Court of Appeal’s Justice Gloria Epstein, one of the participants. She pointed out that family law courses are not a mandatory part of the law school curriculum.

The chief justice also referred to the issue, saying the justice system has to evolve. “Needs change over time. One hundred years ago, family law wasn’t a big issue. Now it is.”

It will take a strategic effort by all the stakeholders to effect change in the long run, says Duggan. But he’s hoping the book will be that catalyst.

Says Duggan: “We want action; we need to do something with the ideas.”

Read more on the Access to Civil Justice for Middle Income Canadians project: uoft.me/a2j



Web Extra: View Chief Justice Beverley McLachlin’s speech in its entirety: uoft.me/chiefmclachlinspeech

Coming up in the Fall/Winter 2011 issue of *Nexus*

From JD to MD

It's enough to make any mother apoplectic with pride—going on to medical school after law school. We'll track down who some of these alumni are, and ask them why they did it.

Ghostbuster

He calls it 'academic prostitution,' and thinks scholars who front articles ghostwritten by pharmaceutical scribes should be charged with professional and academic misconduct and fraud. Meet Prof. Trudo Lemmens.

Reunion 2011, plus Q & A, Opinions, Class Notes and more.

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Letters to the Editor

We welcome your comments and feedback. Send letters to the editor to: nexus.magazine@utoronto.ca. Letters may be edited due to space.

Gold, silver and bronze

“Decade Dozen” and *Nexus* land notable awards

We're thrilled to announce that the Advancement Office has been collecting awards over the past year. Most recently, *Nexus* won gold for the Best School/University Publication, bronze for Most Improved Design, and an honourable mention for Most Improved Editorial in the Magnum Opus 2011 awards. And “Open Access,” written by executive editor Lucianna Ciccocioppo for the Spring/Summer 2010 issue about the Faculty of Law's access to justice initiative, landed a silver for Best Feature Article. Sponsored by custom media producer ContentWise, in partnership with the Missouri School of Journalism, the Magnum Opus competition had 560 global entries in about 200 categories. (www.magnumopusawards.com/Winners.php)

Plus, the “Decade Dozen” feature published in the Fall/Winter 2010 edition of *Nexus*, and promoted online, landed a silver for Best Alumni Initiative in the Canadian Council for the Advancement in Education (CCAЕ) *Prix d'Excellence* competition, which includes entries from more than 140 post-secondary institutions across Canada. (www.ccaecanada.org/index.php/publisher/articleview/frmArticleID/289/)

The law school's reunion ad in the Spring/Summer 2010 issue, featuring a spa theme, and created by senior development officer Sandra Janzen and the UofT design team, was awarded a bronze in

the Council for Advancement and Support of Education (CASE) Circle of Excellence competition, a global contest for the best advancement and communications publications and projects by post-secondary institutions. (www.case.org/Award_Programs/Circle_of_Excellence.html)

And finally, the inside illustration for “Open Access” by Dan Page received a bronze award in CASE's District II Accolades Awards, a regional contest that includes post-secondary institutions in eastern Canada and the U.S.





Taking it to the streets

What do you get when a law professor becomes a scientific director of a health research funding agency? Results

Story by Lucianna Ciccocioppo / Photography by Jeff Kirk

It's not every day a law professor is selected for a scientific director's job at the Canadian Institute for Health Research (CIHR).

"I was honoured when I was asked to apply, but I never thought that I would actually get it," says Prof. Colleen Flood with a laugh. The funding agency thought otherwise.

Fresh off completing two terms, Flood is now on sabbatical and will start up again full-time at the Faculty of Law in September. Chair, research and teaching duties beckon.

But first a look back at her ground-breaking work at CIHR, promoting the vital importance of social science research as part of Canada's health-care reform strategy.

When Flood started the job, the 'lab guys,' biomedical researchers and the like, were the 'stars,' in terms of prioritized funding. But her stellar background in law, health policy, health services and public-private partnerships soon started to change this biomedical funneling of the funds.

"I wanted to be the catalyst to improve funding to health services and policy research, and also improve the perception of its worth in the minds of our stakeholders—the government decision-makers."

Not an easy feat, explains Flood, when taxpayers like to see splashy announcements about new MRIs or CT scans at hospitals. "It's not so sexy to talk about the best delivery arrangement for hip or knee replacements, or the best way to organize the hospital structure."

So Flood made it easy for the stakeholders to sit down, listen

and inform themselves about the latest health policy and services research that was out there, in a program called "Evidence on Tap."

"We asked government leaders and decision-makers: what do you need research evidence on right now? They couldn't wait for a report one year later." Flood and her team would identify the top leaders in the field, and bring the experts together, whether from across Canada or across the globe, for one-day intensive but informal in-camera sessions.

Evidence on Tap was piloted in Saskatchewan, Ontario and New Brunswick to great success. CIHR is now rolling it out to the remaining provinces and territories, and at the federal level as well. "A lot of what we delivered to these decision-makers is now being implemented in ongoing health-care policy and reform. It was very satisfying to see it had uptake."

But closing the knowledge translation gap didn't stop there. Another project put the decision-makers right on the research team. Radical? Yes—and once again successful. The idea has been copied across Canada, and in Australia and New Zealand.

But her conversation grows more animated as she lays out the largest CIHR initiative she launched: a multimillion dollar project on community-based health care. "This isn't funding research relating to the fancy hospital or specialist," explains Flood. "This is research supporting delivery of frontline care, the nurse practitioner, the family doctor, pharmacist, and social worker, for example. It's absolutely fundamental to a well-functioning health-care system."

It's a \$28 million investment to fund teams of researchers Canada-wide to collaborate—rather than working in silos—on health-care delivery, and to provide comparative data at the national level. "We can see what works, and what doesn't," says Flood. "The primary health-care folks are just ecstatic about this project. I have all these love letters saying "Thank you, thank you!"

Not bad for a law professor who acted on serendipity. ↩

Two myths about corporate political speech

Better to focus on the real issues

Story by Ian B. Lee, LLB 1994, Associate Professor, Faculty of Law / Illustration by Pete Ryan

In the debate about whether political donations and advertising by corporations should be permitted in a democracy, there are two unhelpful but tenacious myths.

One of them is that “there is no such thing as too much speech,” to quote U.S. Supreme Court Justice Antonin Scalia. The other myth is that corporate political involvement is inherently illegitimate, because corporations are merely “artificial persons,” creatures of the state.

The first myth is advanced by the supporters of corporate political speech, while the second is put forward by its opponents. Neither is helpful.

If individuals had unlimited time and attention spans, there would indeed be no such thing as too much information. But in the real world, people’s time and attention are scarce resources, and the relative size of the communication budgets devoted to rival arguments can therefore be expected to have an impact on their reception by citizens. That’s just Advertising 101. So there’s a real question whether especially well-financed messages need to be regulated, so that other messages can be heard too.

As for the second myth, the case for corporate political speech doesn’t in fact depend on thinking of corporations as “persons.” On the contrary, what’s important about corporate speech is that, like everything else the corporation does, it reflects the aggregated preferences and interests of large numbers of real people who transact through corporations. That’s Corporations 101.

To take a concrete example, consider the U.S. Chamber of Commerce’s advocacy of immigration reform to create a “path to legitimacy” for undocumented workers. The most likely explanation for the Chamber’s political stance is that U.S. consumers want stable access to labour-intensive goods at lower prices, and corporations increase shareholders’ profits by meeting this demand. The Chamber’s political activities are, in other words, a conduit for the interests of consumers and shareholders.

The aggregating feature of corporate political speech is especially important given that one of the most difficult challenges in a large democracy is how to overcome citizen passivity. A small minority of people, especially at either end of the political spectrum, get involved in grassroots politics. By contrast, the large middle of the spectrum—where many consumers and shareholders in large corporations reside—is often silent and passive.

Freeing ourselves of the two myths does not make debates about

campaign financing go away. It does, however, enable us to focus our attention on more substantial aspects of the problem.

For instance, is it desirable to have a ceiling on political donations and communication expenditures by individuals and corporations alike? In Canada, a limit of \$188,000 applies to third-party advertising during federal elections, whether by a natural person or a corporation or other group. Donations to a federal party or candidate are capped at \$1,100. (Only donations by individuals are allowed.)

The decision whether to have across-the-board limits, and what level they should be set at, obviously involves a trade-off. The higher the limit, the greater the relative influence of wealthy individuals and well-organized groups. But the lower the limit, the less well-informed is the electorate. Reasonable people can disagree about the point at which one of these impacts begins to outweigh the other.

Another issue is whether the aggregating feature of the corporate form has undesirable consequences, insofar as it may result in the interests of consumers and investors being better served than other interests. As Robert Reich has pointed out, most of us are simultaneously consumers, investors, workers, and citizens, and it may be a worry that corporate behaviour aggregates only a subset of our interests: “the consumer and investor in us is well-represented ... but the citizen in us has almost vanished from politics.”

Reich’s criticism cannot be dismissed out of hand, but it is a tricky matter to try to engineer a balance between our various interests by inhibiting an otherwise legitimate mechanism for facilitating collective action. One can try to reduce the influence of the “consumer and investor in us” by prohibiting corporate political donations and advertising, and this would increase the relative influence of the participants in grassroots politics. But it is not beyond dispute that this makes politics fairer and more democratic. It may instead allow the active few to gain at the expense of the passive many. ↩

Ian B. Lee is an associate professor at the Faculty of Law. He teaches and researches in the areas of constitutional, corporate and European Union law. After graduating from this law school, he clerked with Justice Claire L’Heureux-Dubé of the Supreme Court of Canada and Justice Mark MacGuigan of the Federal Court of Appeal, and later served as a legal researcher with the Privy Council Office. In 1998, he received an LLM from Harvard Law School, and practised with Sullivan & Cromwell LLP in Paris and New York City before joining the Faculty of Law in 2003.





Q

A

with
Molly Naber-Sykes,
LLB 1983

Litigator, teacher, writer, parent, and volunteer Molly Naber-Sykes, talks to Nexus about how to have a legal career outside a firm, without ever calling yourself a ‘used to be’

Nexus: Has your career unfolded as you had planned?

Molly Naber-Sykes: I don’t know if I really had a plan. I thought when I graduated that I would work in a law firm and become a partner and I would do litigation. I liked it very much. I was able to find and do good work, I worked well with my colleagues, and worked well with my clients. But I just found it hard to work 60 hours when my husband was working 80 hours and we had three kids. I didn’t feel I was giving my job my full attention. I didn’t feel I was giving my family my full attention. I just felt squeezed all the time.

Nexus: What did you do?

Molly Naber-Sykes: Fortunately, I had the financial support and other support to be able to walk away from my career and I did think I was walking away from my career. I thought it was over. It was so hard for me, so heart-wrenching. I really wanted to practice law. I just didn’t want to go, and I couldn’t see what life beyond the traditional model was going to be for me. I didn’t know what was going to give me satisfaction, what was going to be my identity. But I knew that I wasn’t going to be a ‘used to be.’ One of the partners when on maternity leave talked about going to the playground and talking to other moms about ‘I used to be an accountant’ and ‘I used to be this, and I used to be that.’ I decided I wasn’t going to do that. I completely checked out of downtown. But once a year, I would drop down right into the middle of the profession and hang out with the coolest criminal advocates and the coolest civil advocates [as a trial advocacy instructor]. And I developed a really interesting practitioners’ network.

Nexus: So you didn’t really tune out?

Molly Naber-Sykes: No, I didn’t. I was very fortunate to be connected to the profession through advocacy. I also taught courses at the University of Calgary and at the Alberta Legal Education Society. I think my re-entry to active practice would have been much more difficult, if I had tuned out. I also co-wrote an article for the CBA Alberta branch newsletter, called Practice Pointers. And in every edition, our article was there, and our

photos were there. Most people thought I was still practicing. So that’s how I stayed connected.

Nexus: How did you end up as an instructor in Yemen?

Molly Naber-Sykes: I was one of the founding board members of a non-profit called Bridges, a capacity-building organization based on the model of ‘training the trainer.’ The Yemeni president invited the founder, a friend of mine, to teach. Yemen was graduating 50 percent women from professional faculties, such as law and medicine, and those women needed help finding their way forward after graduation, given traditional Muslim society. I taught ethics and practice management to about 50 lawyers for 12 days in 2007, with interpreters. We engaged them in discussions of some pretty thorny ethical issues. I have to ask you, if I were working in a traditional law firm, could I have pursued that opportunity? Maybe—but unlikely.

Nexus: If you have to do it all over again, would you change anything?

Molly Naber-Sykes: My only regret was that I didn’t leave practice sooner, but now I realize that those years of practice were so important for me on so many levels, so the answer is no.

Nexus: Are you writing your experiences down in a ‘how-to’ book?

Molly Naber-Sykes: That’s a really good question. For the longest time, I didn’t know how I felt about my alternate career path. It wasn’t easy. I don’t think you can appreciate what’s out there ... until you step away from the traditional model. But there isn’t a lot of support for it.

Nexus: What would you like to say to the Class of 2011?

Molly Naber-Sykes: I would encourage them to be courageous if their first job doesn’t seem to be perfect, or if they think there might be something better that fits their passion, or allows them to have work/life balance. Look and see what’s out there. The ability to return to the traditional model is there—and you return stronger. ↩

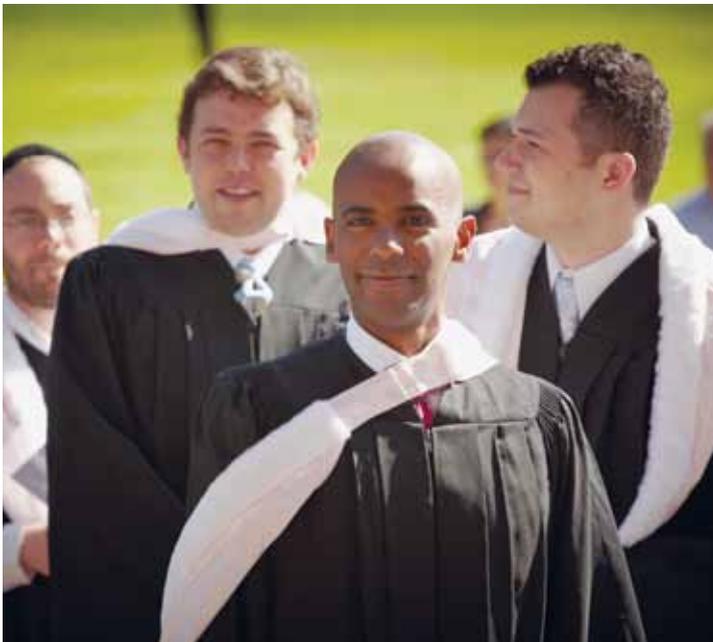
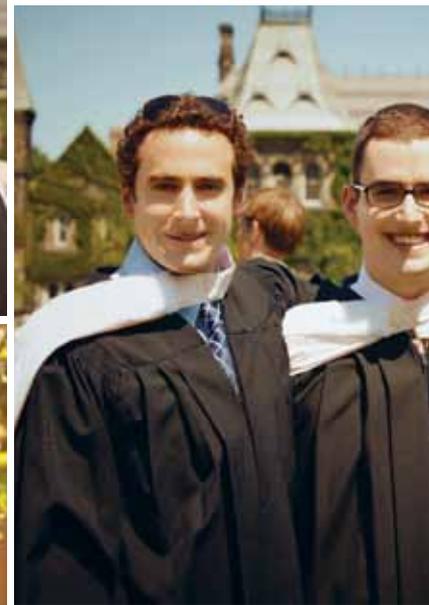
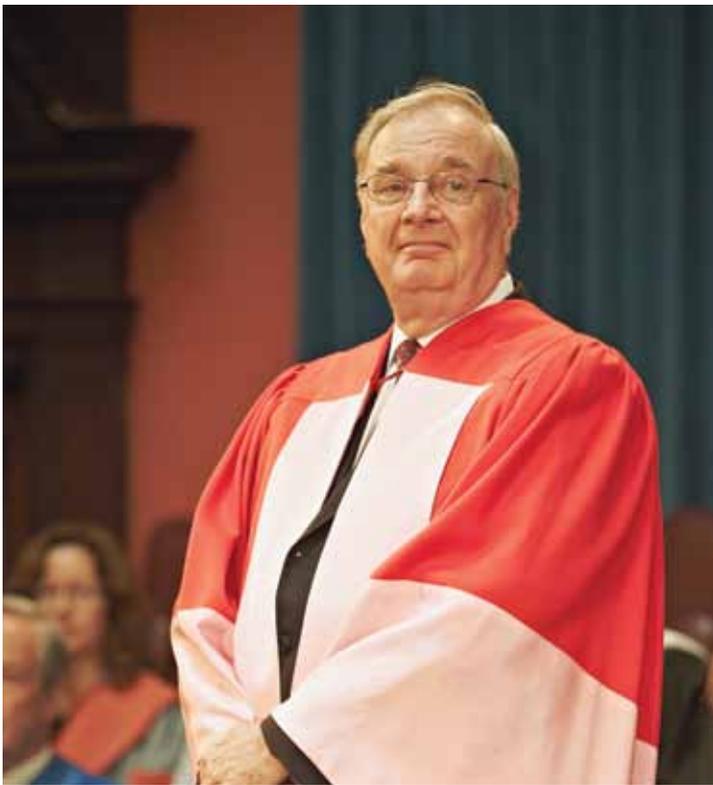


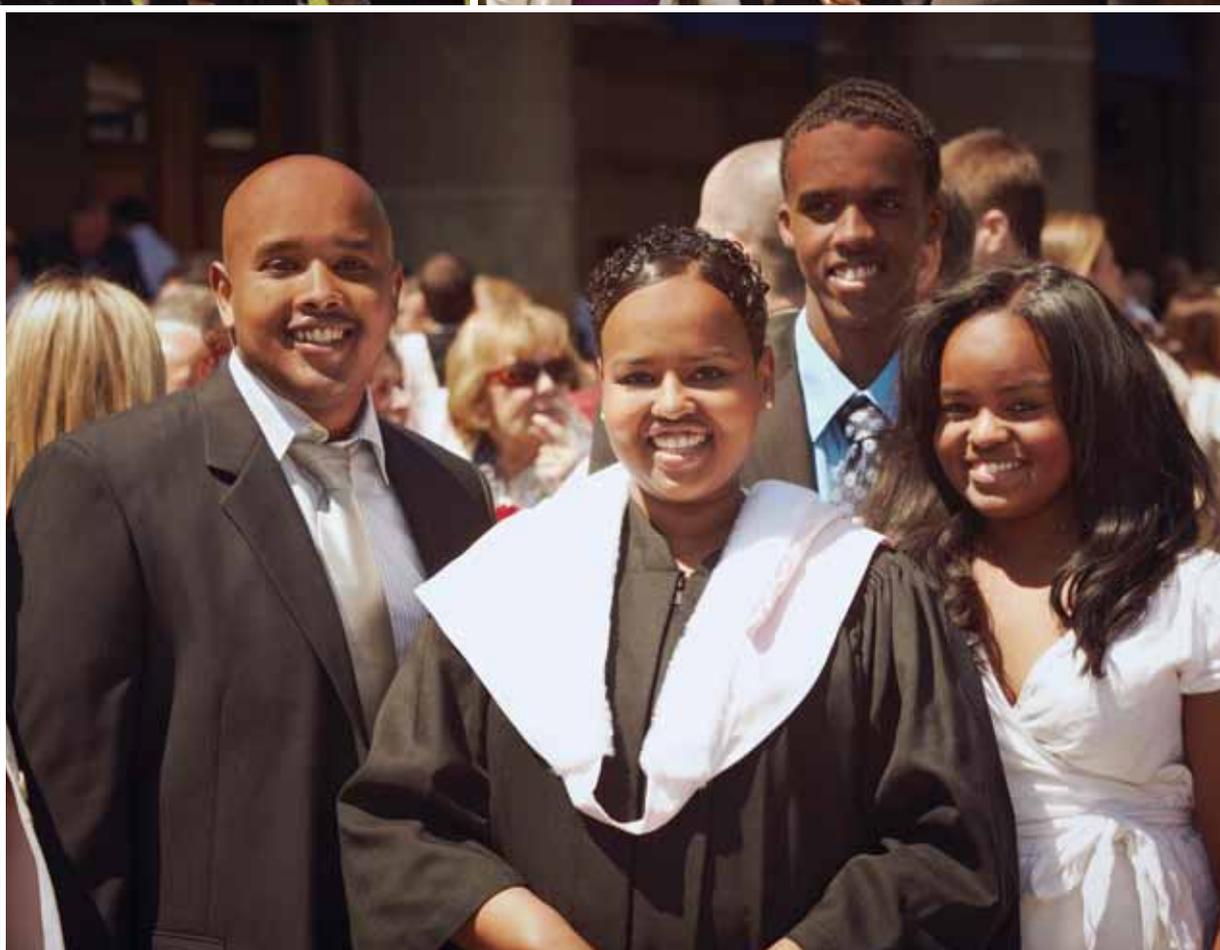
Web Extra: Read the Q & A in its entirety at www.law.utoronto.ca/nexus/Naber-Sykes.html

Convocation 2011

Photography by Jeff Kirk

A world of unprecedented opportunities awaits the Class of 2011, said Paul Martin, LLB 1964, who received an honorary degree at Convocation 2011. "You are truly the first generation of lawyers without borders." But before everyone took off to start their vacations and legal careers, the newest law school graduates enjoyed the warm, sunny day with family and friends who were thrilled to celebrate the end of a demanding three years of law school. The traditional outdoor lunch and awards ceremony, plus a hilarious valedictory speech by Lwam Ghebrehariat, capped off the day. Congratulations Class of 2011!





New partnership gives Pro Bono Students Canada a research boost

Exclusive legal research partner offers financial support, specialized legal research training

Year one of Pro Bono Students Canada's exclusive partnership with Carswell, Canada's leading source of information solutions for the legal profession was a "great success," says Nikki Gershain, PBSC's national director, "and has made a very real contribution to the advancement of pro bono work in Canada."

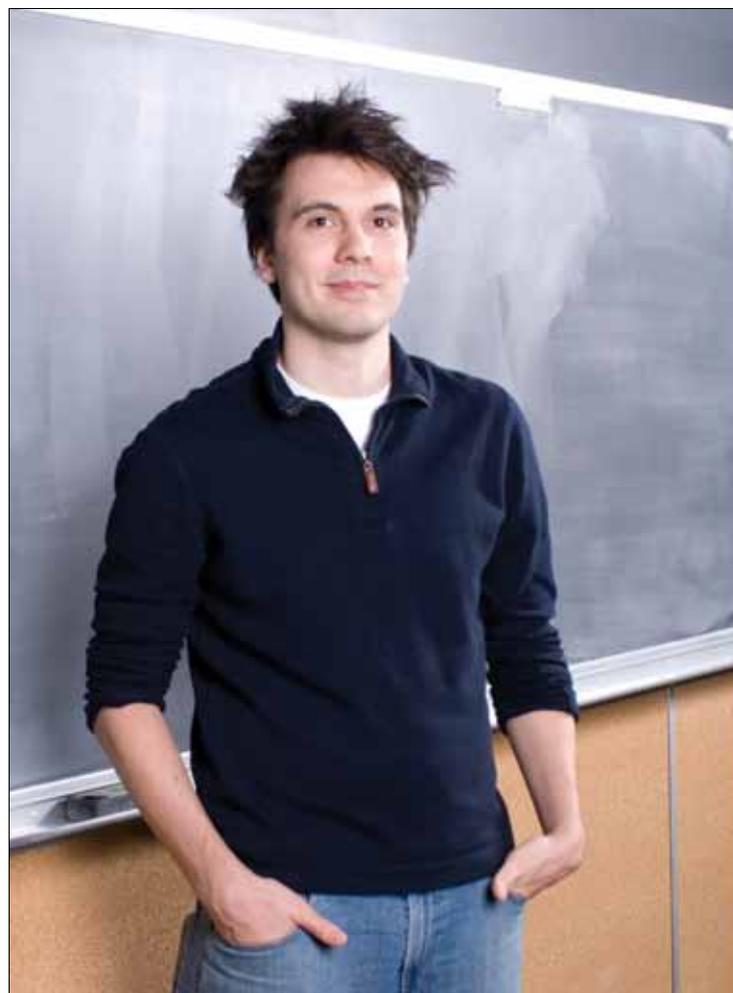
Carswell's donation included financial support and the delivery of a specialized training program for PBSC law students at almost every law school in Canada, in either English or French (with a civil law component through Carswell's Les Éditions Yvon Blais).

"We are proud to be a partner in the important work of the PBSC," said Don Van Meer, president and CEO of Carswell. "Together with other partners such as the Law Foundation of Ontario, McCarthy Tétrault LLP and the University of Toronto Faculty of Law, I believe we are making a real difference in improving access to justice for community-minded organizations that rely on pro bono legal services to continue their important work."

Together with Susan Barker of the UT Law Library, Carswell also developed a customized research booklet for PBSC students working on public interest research projects. After experimenting with a few different kinds of presentations at the law schools, PBSC and Carswell are currently working on one mock problem for the entire program: a hypothetical Charter case on panhandling in a public place.

"Carswell's expert legal research and writing trainer will present the hypothetical to law students as a PBSC assignment, walk them through the research process as part of a live powerpoint presentation, and then provide them with a three-page memo on the topic so the students can actually see what the final, written product, based on the research, would look like" explains Gershain.

PBSC and Carswell are now working on expanding the training program to include specific research support for a number of PBSC's legal placements. ↗



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Candy Schaffel 1958–2011

By Graham Smith, JD 1984

Our treasured friend and partner Candy Schaffel, JD 1983, died on January 10, 2011.

Candy graduated from University of Toronto in 1980 with a Bachelor of Science, and from University of Toronto Faculty of Law in 1983. To our great fortune, she chose Goodmans as a summer student and never looked back, practising with Goodmans as a highly respected insolvency and restructuring counsel for her entire career. Candy made a particularly significant contribution to the field of financial institution insolvency. As a legal counsel, she was principled, intelligent, honest and creative. As succinctly put by a long-time client, she “was the consummate professional with great legal skill and judgment, mixed in with a great human touch and humour.”

Candy was diagnosed with cancer more than seven years ago. She lived every day with extraordinary determination, not just to battle the illness, but to truly and fully live each day, and as long as she could—as a mother and wife, as a friend, as a world traveller, as a lawyer. Throughout her illness and the exhausting treatments, Candy continued to be interested and engaged in the law, returning to work as much as she could manage, while always staying current on the law and legal developments.

Candy was that special breed of person who leaves a universal impact. When she touched your life as a friend, law partner, client or professional colleague, you could not help but feel respected, impressed, happier and more confident, through the unique mix of Candy’s smile, laugh, brilliance, caring and calm. At law school, at Goodmans, and throughout her professional and personal world, it was a truism: “Everyone loved Candy.” To those of us closest to her, Candy especially brought us real comfort. We are deeply thankful for her life and for her sharing it with us.



Graham Smith was a partner of Candy Schaffel at Goodmans LLP, and her law school classmate.

John Tory Sr. 1930–2011

One of the Faculty of Law’s most notable alumni, John Tory Sr., LLB 1952, died suddenly on April 2, 2011 from a stroke. He was 81.

Tory rose with quiet confidence in the business and legal worlds of top Fortune 500 companies, most notably the enterprises of the Thomson and Rogers families. In the early ’70s, Tory left his family’s iconic law firm and Bay street institution Torys LLP, today one of Canada’s leading law firms, to become senior financial adviser to Ken Thomson, and helping to catapult that family’s newspaper business into a global player.

As the tributes flowed in for this business giant, many referred to his unassuming, calm demeanour and his numerous trusted, long-lasting friendships. The Toronto Star wrote he was “counsel and friend to Canada’s mightiest men.”

A mentor to many young lawyers and philanthropist to myriad organizations, Tory led by example and gave back to the community, supporting many institutions, such as Sunnybrook Hospital, the Art Gallery of Ontario, and the Centre for Addiction and Mental Health.

“John Tory Sr. was an esteemed figure in Canadian law and business, an outstanding alumnus of the University of Toronto Faculty of Law, and a great supporter of this law school,” said Prof. Mayo Moran, law school dean. “He will be missed.”



Caron Wishart 1948–2010

Caron Wishart passed away peacefully December 19, 2010, after a determined battle with cancer.

Wishart received her bachelor of education from U of T in 1970 and worked as a secondary school teacher for the Toronto Board of Education until 1974. She then pursued her LLB at U of T and graduated from law school in 1978. She was called to the bar in 1980 and went into private practice, focusing on real estate law, later joining the law firm of Cravit and Dexter in 1981.

In 1984, she joined the Law Society as a claims examiner in its errors and omissions department, and worked her way up to claims manager and executive assistant. When LAWPRO was created in 1995, Wishart was appointed its first Vice-President, Claims, and was instrumental in building the new company's claims department into a "best in class" operation. Wishart took a principled approach to claims management, which remains LAWPRO's trademark and one of her many legacies to the legal profession.

She was a strong advocate of helping and teaching the next generation, taking time to mentor LAWPRO's articling students, guiding LAWPRO's new claims counsel and ensuring firms handling LAWPRO claims files had in place mentoring programs to develop junior counsel and create expertise in insurance defence law.

Caron loved to spend time with her family, friends and dog, Harley, at her Muskoka cottage. She will be remembered for her quick and analytical mind, generous and hearty laugh, kind spirit, courtesy, caring and compassion. ↵



News and Events

New associate dean of the first-year program: Benjamin Alarie

Prof. Ben Alarie has been appointed the new associate dean for the first-year program, effective July 1, 2011, for a three-year term. He takes over from Prof. Sujit Choudhry, whose term draws to a close at the end of June. Alarie, a well-loved faculty member among students, is an associate professor and researches and teaches principally in taxation law, but also researches contracts and judicial decision-making. He's the convenor of the James Hausman Tax Law and Policy Workshop at the law school, and is currently serving a two-year term as president of the Canadian Law and Economics Association.

New associate dean of research: Edward Iacobucci

Prof. Edward Iacobucci has been selected the law school's first associate dean of research, effective March 15, 2011, for a two-year term. He holds the Osler Chair in Business Law at the Faculty. Iacobucci researches and teaches corporate and competition law, and law and economics more generally. As associate dean of research, Iacobucci says he'll seek to support faculty scholarship, to provide faculty with the tools and support they need to realize their scholarly ambitions, and search for means to ensure the broadest dissemination of their research.

Save the Date for Reunion 2011!

October 28 – October 29, 2011

Alumni who graduated in a year that ends in "1" or "6" are invited back to the law school for special Reunion 2011 celebrations.

For further information: <http://uoft.me/lawreunion2011>

CLEA Conference—James M. Tory Law and Economics Public Lecture

"Innovation Policy, Carbon Pricing and the Dynamics of Global Warming" by Prof. Ralph Winter, Canada Research Chair in Business Economics and Public Policy, Sauder School of Business, University of British Columbia.

September 23, 2011

1:30 pm – 2:30 pm

Faculty of Law, Flavelle House, Bennett Lecture Hall
78 Queen's Park

For more information, contact Nadia Gulezko at n.gulezko@utoronto.ca

2011 Annual Workshop on Commercial and Consumer Law

October 14 – 15, 2011

8:00 am – 5:00 pm

Faculty of Law, Falconer Hall, Solarium and FA1
84 Queen's Park

For more information, contact Prof. Jacob Ziegel at j.ziegel@utoronto.ca

For information on upcoming Faculty of Law events, view:
www.law.utoronto.ca/programs/calendar.html

1963

William C. Draimin, LLB: There is still an approving nod from others when, after 45 years of law practice, I indicate I graduated from the University of Toronto Faculty of Law. But little did I realize when I graduated from law school that I would find myself assisting others, 45 years later, in the field of “cemetery law.” Rather than a nod, that information usually brings a chuckle. My recent appointment as honorary legal counsel to the Ontario Association of Cemeteries and Funeral Professionals will ensure that the chuckles will continue for some time.

1970

Doug Wilson, JD: I retired from practicing law in December 2010, having specialized in intellectual property with Lang Michener and Ridout & Maybee. In May 2011 I was humbled to be honoured by the Canadian Bar Association, National Intellectual Property Section, at the Federal Courts of Canada Judges’ dinner held at the Canadian Museum of Civilization, for contribution to the development of intellectual property jurisprudence in Canada. The court practice committee noted that I was counsel in cases including some of the most important and frequently cited decisions in Canadian patent law and in trademark cases, such as the Jaguar Cars case dealing with the limits of protectable goodwill in famous trademarks. I continue to love living with my wife of 42 years, Lynne, in Cabbagetown, Toronto and am proud of my daughter, son and two grandchildren. Email: dougwilson@rogers.com.

1974

William Bogart, LLB: I am University Professor and professor of law at the University of Windsor Faculty of Law. I just published my sixth book, *Permit But Discourage: Regulating Excessive Consumption* (New York: Oxford University Press, 2011). I’m at work on my next book: *Regulating Obesity: Promoting Health or Inciting Panic?* Email: wborgart@uwindsor.ca.

1978

Michael Johnson, LLB: I’m still with Carswell, now part of Thomson Reuters, as a legal writer. For the last five years I have been part of Masterworks of Oakville Chorus and Orchestra, singing in the bass section with Sean and Stephen (our sons) and my wife Terry (soprano/alto).

1979

Bruce Clark, LLB: I’ve been at Cassels Brock & Blackwell LLP (and its predecessor Blackwell, Law, Spratt, Armstrong & Grass) since the call to the bar in 1981, practicing corporate, commercial and securities law. Married to Marg Roberts/Clark, son Andrew born in 1994.

1980

Judith L. Huddart, LLB: Since my call to the bar in 1982 I have been active in leadership roles with the family law sections at the provincial and national levels of the CBA. I am currently secretary/treasurer of the CBA Women Lawyers Forum, as well as the forum’s newsletter editor. Over the past 10 years, I have found my family law practice re-invigorated through training to broaden my skills to offer a collaborative team approach to my family law clients. I am very proud to be one of many family lawyers as well as mental health and financial professionals offering a respectful, safe, child-focused option to families. My current role as president of the Ontario Collaborative Law Association (www.oclf.ca) also provides me with an opportunity to educate the public as well as government about this no-court option. It is exciting and a privilege to be on the cutting edge of change in family law and it is gratifying to hear that the judiciary is also supporting options like collaborative law/practice and mediation.

1984

Alasdair Roberts, JD: I was appointed as a public member of the Administrative Conference of the United States, an advisory body on administrative law established by the U.S. Congress. I am the Rappaport Professor of Law and Public Policy at Suffolk University Law School in Boston.

Anthony Saunders, JD: After 25 years of insurance litigation at Guild Yule LLP in Vancouver, I was appointed to the Supreme Court of British Columbia in November 2009—joining our classmate Susan Griffin on the bench—and am sitting in New Westminster, B.C. Prof. Carol Rogerson may be pleased to hear that I have a growing appreciation of the Spousal Support Advisory Guidelines!

1987

Mary Watt, JD: Just a brief note to advise you that I am now the chair of the department of languages, literatures and cultures at the University of Florida. Go Gators!

1992

Paul Paton, JD: I have been appointed as reporter to the American Bar Association’s Ethics 20/20 Commission, with special responsibility for its working groups on alternative business structures and entity regulation. The commission was appointed in 2009 to perform a thorough review of the ABA Model Rules of Professional Conduct and the U.S. system of lawyer regulation in the context of advances in technology and global legal practice developments. The commission’s mandate runs through 2012, and it will hold hearings during the ABA annual meeting in Toronto in August 2011. I was also reappointed chair of the Canadian Bar Association’s National Ethics and Professional Responsibility Committee for 2010-11, and this year was invited to talk to the International Institute for Law Association Chief Executives, the International Bar Association, the Federation of Law Societies of Canada, and the (U.S.) National Institute on Teaching Ethics and Professionalism on the future of lawyer self-

regulation and the independence of the bar, as well as on professionalism and ethics issues in comparative/international context. Currently, I am professor of law and director of the Ethics Across the Professions Initiative at Pacific McGeorge in Sacramento, California.

1993

Marion Hoffer, JD: When I graduated in 1993 from U of T law, I promised myself that I was going back to do my LLM at a university outside Canada after I had practised for five years. After being called to the Ontario Bar in 1996, it took me merely an extra 10 years to achieve my goal, but I am pleased to report I am officially a member of the LLM Class of 2012 at University of California Los Angeles campus, a.k.a. UCLA. I am on leave for the year from my position as counsel to the Ministry of Education and Ministry of Training, Colleges and Universities for the Government of Ontario. My best friend, Honey Bear, a black Havanese dog, will be accompanying me. California here we come!

Charles Wright, LLB: I am a partner at Siskinds LLP, with the class actions department, and authored a chapter in the newly released *American Antitrust Institute's The International Handbook On Private Enforcement of Competition Law*, published by Edward Elgar Publishing. I was recently appointed to the American Bar Association's Section of Antitrust Law's Civil Redress Task Force for 2011-2012.

1994

Alice Woolley, LLB: I'm professor of law and director of admissions at the University of Calgary Faculty of Law. I have just had a book published, *Understanding Lawyers' Ethics in Canada*.

1996

Nicholas Holland, LLB: I am currently a partner and head of contentious trusts and probate with Bircham Dyson Bell LLP in London, England, having left a similar position at Solomon Harris in the Cayman Islands. I can be reached at nicholasholland@bdb-law.co.uk.

1997

Craig Martin, JD: Leaving the frenetic world of corporate-commercial litigation behind me in 2006, I spent four years at the University of Pennsylvania Law School working on a doctorate in law, focusing on international and constitutional law constraints on the use of armed force. After graduating in 2010, I spent a year visiting at the University of Baltimore School of Law teaching public international law and international business transactions, and this fall I head to Washburn School of Law in Kansas to take up a position as associate professor, teaching primarily international law, the law of armed conflict, and constitutional law. I look forward to catching up with everyone at the next reunion!

Andrew Spence, LLB: I have recently returned to Toronto after working and practicing law abroad for several years. For the past seven years, I practiced in banking and capital markets at Hogan Lovells

(formerly Lovells) in London, England, and I practiced at Clifford Chance in international banking in Amsterdam for two years prior to London. Prior to working abroad, I practiced at Torys in Toronto in securities, mergers and acquisitions and corporate law. I have led and acted on a wide variety of transactions for banks, private equity funds, corporate borrowers and bond trustees, including leveraged buy-out financings, syndicated loan facilities (typically secured), corporate bonds and structured finance deals in the capital markets, debt restructurings, debt-for-equity swaps, enforcement planning and insolvency actions against defaulting borrowers. I have now moved back to Toronto and am seeking new opportunities to apply my skills and experience in the Toronto market, such as in-house roles at banks, private equity funds, pension funds and other financial institutions. My e-mail is andrewspence@hotmail.com.

1998

Tamara Kronis, LLB: I opened up a custom jewellery design studio at 1098 Yonge Street in Toronto, just north of Rosedale subway station. If you are in the neighbourhood, stop by to catch up! If you are online, check us out at www.studio1098.com.

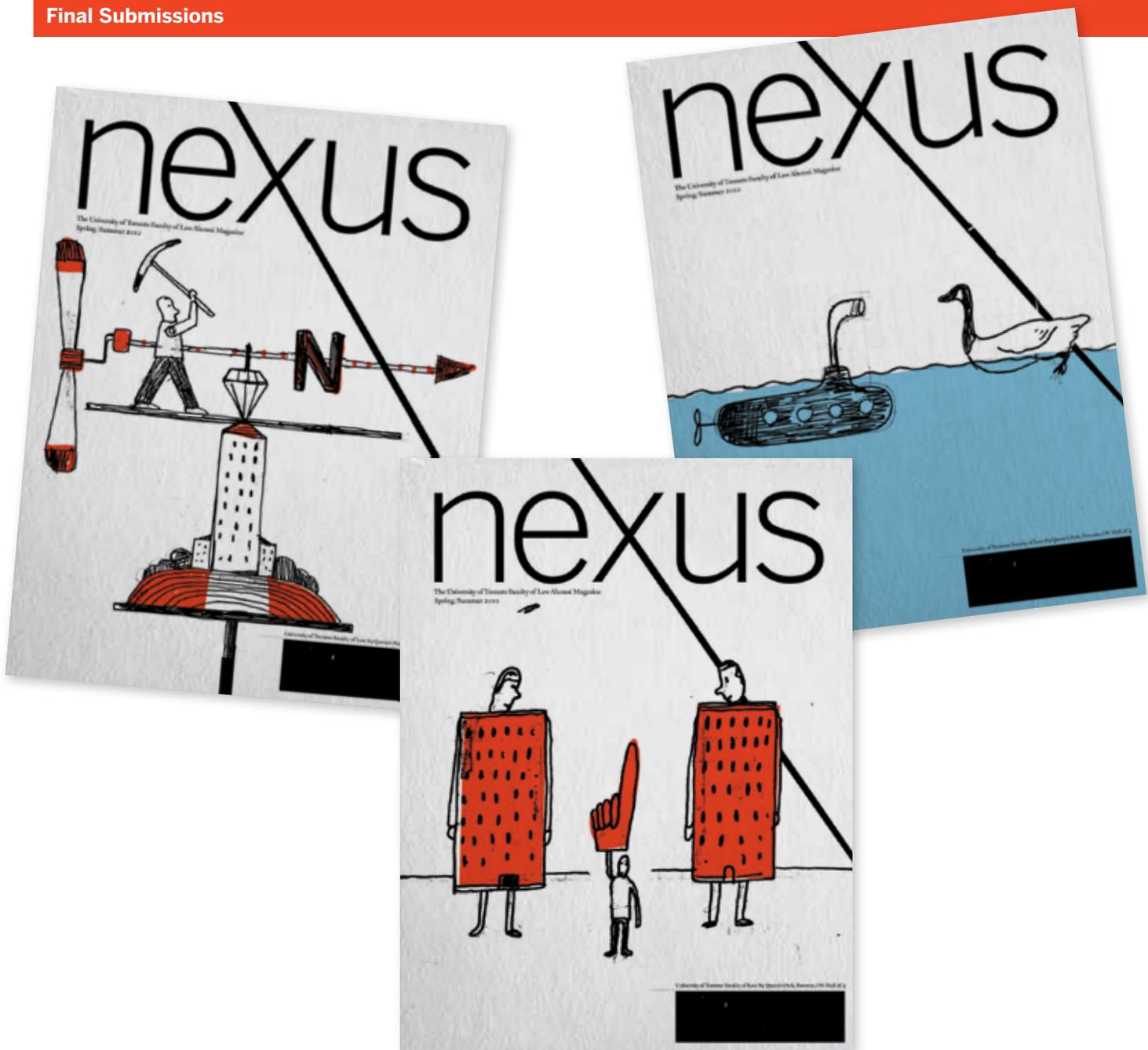
2000

Derek Abreu, JD: I was made partner at Bell, Temple in 2010, and my wife (Cathy Abreu) and I celebrated the birth of our second son, Luke Raphael Abreu on February 23, 2010. His older brother, Julian Derek Abreu (DOB - April 29, 2008) is very excited!

2001

Veronica Henderson, JD and Andrew Ashenhurst, JD: We were married in an intimate ceremony on May 26th, 2011 at the lovely Spanish Monastery in North Miami Beach, Florida. Reverend Joaquin Perez officiated. We divide our time between Toronto and Miami. ↖





Pick a cover

Story by Christian Northeast, Illustrator

I wanted to avoid anything too corporate and dry. I used “**looking to the north**” as my jumping off point. It was ambiguous enough to allow for different visuals, but it still connected to the story.

Yes, I get **stumped** all the time. The goal is to be original and non-repetitive, which can be hard to sustain after 18 years of work. I find taking a **short break** from a difficult project can lead to better ideas.

I usually read the story a few times, take some notes, underline key words, then start working on some very **rough drawings** for a direction that feels original, and suits my sensibility.

I liked the whirligig draft. I like folk/native art, and I thought I could **fuse** the story into a handmade-looking contraption. I also like the fact that **whirligigs** work with the wind. I thought it was a good **metaphor** for the story.

Sometimes I think I have a great idea—but it doesn’t fly (see above). ↩

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