

western law

Making their mark

Three alumnae at the top of their game
in government, business and law



THE IMPACT OF THE CHARTER

WESTERN LAW GRADS MAKE THE
YEAR'S BIGGEST M & A DEALS

PRO BONO IS THRIVING AT
WESTERN LAW

STUDENTS FORGE DIVERSE
POLITICAL CONNECTIONS

INCOME TRUST MYTHS

Serving 5,800 alumni world-wide, The University of Western Ontario Law Alumni Association (UWOLAA) aims to:

- Promote fellowship among its members through Homecoming and other special events as they relate to the Faculty of Law and Western in general
- Develop a bond of cooperation and assistance between UWOLAA and the Faculty of Law
- Provide assistance to the Administration, Dean and Faculty of Law as it relates to student relations, alumni development issues, fund-raising and communication
- Promote the strategic direction of the Faculty of Law.

If you have ideas, questions, suggestions or would like to partner with your local alumni branch to host a law alumni event please contact Carolyn Lamb, Alumni Outreach Officer, at clamb22@uwo.ca or call (800) 258-6896.

Upcoming Alumni Events

• Homecoming

Faculty of Law Open House and Tours

Saturday, September 29, 2007 at 10:00 a.m. – 12:00 p.m.

Law Alumni Association Annual General Meeting

Faculty of Law

Saturday, September 29, 2007 at 9:30 a.m.

Manulife South End Zone Lunch, TD Waterhouse Stadium

Saturday, September 29, 2007 at 11:00 a.m.

• Western Law Alumni Dinner in Toronto

Alumni Award of Distinction recipient:

The Honorable J. Edgar Sexton, LLB '62

Guest Speaker: Dick Pound, Chairman
of the World Anti-Doping Agency

Sovereign Ballroom, King Edward Hotel

Thursday, October 25, 2007 at 6:00 p.m.

• Alumni Denning Night in Hamilton

Thursday, November 8, 2007

• Alumni Denning Night in Toronto

Wednesday, March 5, 2008 (tentative date)

For more information about the above events visit www.alumni.ca/branches/law

UWOLAA Executive for 2006/2007

President	Richard J. Morelli ('95)
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Vice President	Dara Lambe ('03)
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Director	Anna Naud ('04)
Director	Rocky Vacca ('95)

Get Involved

If you are interested in joining the UWOLAA executive please contact Carolyn Lamb, Alumni Outreach Officer, at clamb22@uwo.ca or call 1-800-258-6896.





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On the Cover: Laurel Broten '93, Michelle Lally '90, and Andrea Daly '94 in BCE Place, Toronto

Western Law Alumni Magazine 2007

Managing Editor: Susanna Eayrs
Editorial Board: Ian Holloway, Craig Brown, Grant Huscroft, Tim Edgar, Susanna Eayrs, Max Morden
Editorial Consultants: Morden Communications
Editorial Assistants: Tigger Jourard, Teresa Bourne
Design & Production: Jason Recker/Carve Design

Photographers: Warren Toda (cover), David Chidley, Craig Glover, Paul Mayne, Rachel Lincoln, Shawn Simpson, Bob Klanac, Alex Dimson, Jeanne Martin
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Comments and contributions are welcomed. Please email Susanna Eayrs at seayrs@uwo.ca
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Dean Ian Holloway

A message from the Dean

Let me begin by offering my thanks – and the thanks of all of us – to Craig Brown for having stepped in to serve as dean last year. Craig did far more than was fair to have expected of an acting dean, but I know I speak for everyone in the law school when I say that we are much the richer for having had him as our leader. He has now begun his period of (long-overdue) study leave, which he'll be spending partly in Canada and partly in New Zealand.

My sabbatical leave, the lion's share of which I spent as a Visiting Professor at the National University of Singapore, was productive and enjoyable. But it's nice to be home, and even nicer to be writing to you again about the exciting things we're featuring in this year's issue of the magazine.

Our featured alumnae are all graduates of the 90s. Each is under the age of forty-five, yet all three have become undisputed leaders in their fields. Laurel Broton '93, is Ontario's Minister for the Environment. Andrea Daley '94 is General

for Onex Corporation, and was recently named as one of Canada's top 40 lawyers under 40. Michelle Lally '90 is a partner in the firm of Osler, Hoskin & Harcourt, and also a "Top 40 under

40" (and named by Global Competition Review as one of the top 100 women in antitrust in the world). Their stories make inspiring reading.

The Report on Business and Financial Post tell us that mergers and acquisitions are hot again. We have a fascinating piece on the role that three of our graduates are playing in the M & A scene, not only in Canada but internationally. These include Garth Girvan of McCarthy Tétrault and Bill Braithwaite of Stikeman Elliott both from the Class of '76, and Dale Ponder '80, the Managing Partner at Osler.

But no magazine like this would be complete this year if it did not note the silver anniversary of the Canadian Charter of Rights and Freedoms. It is a source of considerable satisfaction to me personally that Western is one of the few law schools in Canada today where students are invited to think critically about the Charter and its place in the Canadian legal and political system. It is a delight to be able to include a Charter debate among three colleagues, Associate Dean Grant Huscroft, and Professors Melanie Randall and Bradley Miller. I'm sure you'll find the exchange provocative. We also celebrate the

twentieth anniversary of the *Canadian Journal of Law and Jurisprudence*, which has become one of the leading scholarly periodicals in legal philosophy in the English-speaking world.

Many of you have heard me speak about the renewed emphasis we are placing on scholarship and research in the law school. Oliver Wendell Holmes wrote that the aim of a law school should be "not to make men smart" (as he was writing in an era in which his audience was all male), "but to make them wise in their calling – to start them on a road which will lead them to the abode of the masters." An integral part of this is to place a special premium on the intellectual and reflective side of the law. To introduce you to some of the fascinating scholarly work being done in the law school, we profile Professor Daniel Sandler who has been publishing some very important work on venture capital – a subject critical to Canada's future. Also included are three faculty essays. The first, by Associate Dean Tim Edgar, deals with income trusts – the on and off-again darling of the Canadian investment scene. Professor Margaret Ann Wilkinson writes on privacy in the digital age, Professor Christopher Nicholls extracts a valuable lesson from the Bre-X mining debacle and Professor Michael Coyle offers an essay on Aboriginal land claims drawn from his experience as an expert involved in the Ipperwash Inquiry.

As nice as it is to be back, one of the most melancholy things I have had to do since my return is attend the retirement dinner for Winnie Holland, Peter Barton and Marianne Welch. All three have been mainstays in the school for decades and we pay tribute to them and their many contributions to the life of the law school. Yet every ending marks a new beginning, and we are delighted to be introducing three new colleagues, Andrew Botterell, Margaret Martin and Sara Seck. Each will bring exciting new things to the law school, and we look forward to seeing their careers blossom in the years ahead.

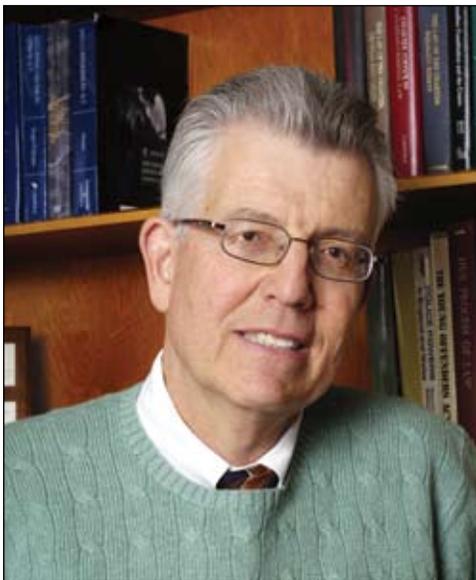
There is a saying in Sanskrit that a timid mind can never discover the truth. As legal scholars and law teachers, this surely must be our lodestone. To my mind, if we are to be a successful law school, we owe it to our students – and to our graduates – to ensure that we don't merely empower our students (to use the trendy expression), but that we embolden them as well. That is why these stories and profiles are vitally important. They represent a continuing testament to the vibrancy of the broader Western Law community. And they represent a source of pride to us all.

"...it's nice to be home, and even nicer to be writing to you again about the exciting things we're featuring in this year's issue of the magazine"



The Youth Project

Western Law students Juline Fresco, left background, and Mana Kkami teach London high school students about the justice system. The project teaches teens about the Youth Criminal Justice Act and restorative justice and aboriginal sentencing circles through role playing and interactive learning. The Youth Project is part of the Public Legal Education Program of Western Law's Community Legal Services.



Prof. Robert Solomon

Prof. Robert Solomon wins international award for impaired driving research

Western Law Professor Robert Solomon has been awarded the prestigious Widmark Award for his significant legal research and advocacy work in the field of impaired driving reform. The Widmark Award is the highest honour that The International Council on Alcohol, Drugs and Traffic Safety can confer on an individual. The award honours those who have made "an outstanding, sustained and meritorious contribution to the field that has led to international standing and respect". Solomon becomes one of only 28 recipients from around the world to be so honoured in the 42-year history of the award.

"Robert is Canada's pre-eminent legal scholar in the traffic safety field," says Dean Ian Holloway. "His research has had far-reaching influence and has shaped legislative policies towards impaired driving across Canada. We are delighted he has been honoured with this award."

As MADD Canada's National Director of Legal Policy Solomon co-authored the organization's Federal Legislative Reform Agenda. He was also the lead author of MADD Canada's Rating the Provinces and Territories reports. Most recently he co-authored Youth and Impaired Driving in Canada: Opportunities for Progress. These documents provide a research-based blueprint for more effective impaired driving laws.

Says Andrew Murie, MADD Canada's Chief Executive Officer: "Robert has been a tireless public advocate for legislative reforms to reduce alcohol-related deaths and injuries in our country, particularly among young people. His contribution has been immeasurable."



Western Law administrative assistant Tigger Jourard fulfilled a lifetime dream when she appeared on the television show Jeopardy! this past May

Jourard answers the Jeopardy challenge

Western Law administrative assistant Tigger Jourard fulfilled a dream of a lifetime this past May when she appeared on the popular television game show Jeopardy! Jourard was selected from more than 100,000 entries

from across North America. "I'm old enough to remember the original Jeopardy from the '60s," she says. "I've been sitting on my couch playing the game on TV for years and yearning to play it for real. It was a blast to get that opportunity."

Jourard played an excellent game and

was in the lead going into final jeopardy. Although she didn't end up winning, she has absolutely no regrets about the experience. "It was even better than I imagined," she says. "Not many people can start a conversation 'When I was on Jeopardy!...'"



Prof. Valerie Oosterveld

Prof. Valerie Oosterveld co-hosts United Nations meeting

Professor Valerie Oosterveld co-hosted a meeting in February at the United Nations in New York with Prosecutors, Presidents (Chief Justices) and Registrars of international criminal tribunals, entitled "Planning for Residual Issues for International and Hybrid Tribunals".

This expert group meeting addressed the legal and practical obligations that continue after the physical closure of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts in Cambodia.

Professor Oosterveld organized this meeting in collaboration with the International Center for Transitional Justice and the Canadian Mission to the United Nations, with an \$82,000 grant from the Department of Foreign Affairs and International Trade's Human Security Program. Professor Oosterveld was ably assisted by Western Law students Andrea Marlowe and Sally Khalil.

Brian Mulroney receives honorary degree from Western

The University of Western Ontario conferred an honorary Doctor of Laws upon former Prime Minister Brian Mulroney at the June 15 afternoon session of Western's 288th Convocation.

The honour was given to Mulroney in recognition of his career in politics. In his citation, Craig Brown, Acting Dean of Western Law, spoke of Mulroney's leadership and vision.

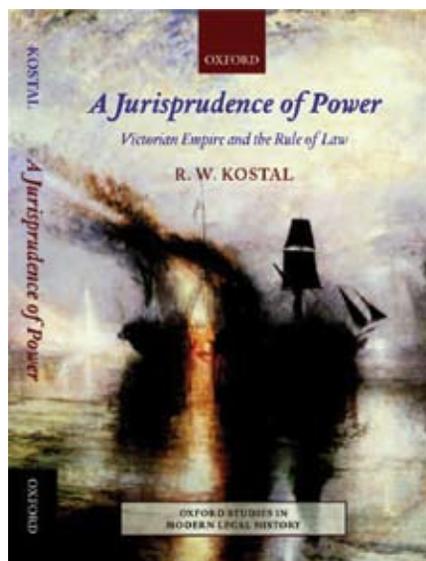
"It is true that, in common with all politicians, his actions did not always meet with complete approval," said Brown. "But, as Churchill said: 'I have always felt that a politician is to be judged by the animosities he excites among his opponents.'"

Mulroney spoke to graduates from the faculties of Law and Graduate Studies, Schulich School of Medicine & Dentistry and Richard Ivey School of Business. He used the occasion to share laughs about his career ups and downs and also underline the importance of idealism in graduates' lives.

"Idealism and principles are the great gifts of your education," he said. "May your strength be your gift to the nation and may your idealism be your gift to the world."



Right Honourable Brian Mulroney at Western's Convocation



Prof. Rande Kostal's Jurisprudence of Power garners international acclaim

Professor Rande Kostal has received accolades for his latest book, *A Jurisprudence of Power: Victorian Empire and the Rule of Law*. Published by Oxford University Press, the book received a Ferguson Prize 'Honourable Mention' from the Canadian Historical Association.

A Jurisprudence of Power concerns the brutal suppression under martial law of the Jamaica uprising of 1865, and the explosive debate and litigation these events spawned in Eng-

land. The book explores the centrality of legal ideas and institutions in English politics, and political ideas that give rise to great questions of English law.

Among the reviews:

"...a brilliantly timed monograph...it provides a wonderful way into the actual operation of the law of empire and that law's troubled place in Anglo-American constitutionalism...helps to make sense of critical features of twenty-first century American legal debates. Kostal's book does this beautifully. It deserves a large audience."

- John Witt, Harvard Law Review

news of the school



Former C.A.W. President, Bob White, with his daughter Robyn White '07, at the Labour Law Conference

The world at work

Leading legal and industrial relations scholars from Canada and abroad examined and debated international labour law and its impact on the global workplace at Western

Law's fourth annual Labour Law Conference held last October.

The conference, co-sponsored by Heenan Blaikie LLP and Western Law featured four vibrant panels on various aspects of international rights at work. Brian Burkett, a senior partner at Heenan Blaikie, led off the morning with an incisive overview of recent legal policy developments at the International Labour Organization. The Equality and Discrimination in International Labour Law panel offered perspectives on disability and race discrimination and the panel on Creating a Fair Globalization, debated the role of law in protecting and enhancing workplace rights. Other panels focused on the impact of globalization on labour laws in the important emerging economies.

The featured luncheon speaker was Manuela Tomei, a senior equality officer at the International Labour Organization (ILO) in

Geneva, who provided an inspiring review of the recent work of the ILO on combating discrimination in the global workplace.

Prof. Manfred Weiss, one of Europe's leading scholars on international labour law delivered the fourth annual Koskie Minsky University Lecture in Labour Law. He provided a comprehensive and insightful overview of the challenges facing Europe as it struggles to wed modern efficiency with employment justice among 25 diverse legal systems.

The 2007 Western Labour Law Lecture and Conference 2007 will be held on October 26-27 at Western Law with the theme "The Charter, Human Rights and Labour Law: 25 Years Later." The fifth annual Koskie Minsky University Lecture in Labour Law will be delivered by the Chief Justice of Canada, the Right Honourable Beverley McLachlin. For further information, please contact Prof. Michael Lynk at mslynk@uwo.ca, and visit the Western Law website.



Michael Bloom hoists the Kin-ball high as fellow Western Law teammate Jared Gordon cheers him on. Kin-ball was among 15 sports during the 2007 Law Games held at Western in January

Law games draws 900 students from across Canada

Law students from coast to coast made their way to Western last January for the 2007 Law Games. "They came from the University of Victoria to Dalhousie in Halifax," says Western Law student Nick Pasquino, the Law Games Marketing Chair. "We had 900 law students from the 18 schools fielding teams."

The Law Games is an annual five-day gathering with students competing in

academic, athletic and social events to win the coveted Spirit Awards. The five-day event brings together law students from across the country to socialize and cultivate relationships. "The committee worked hard to add value to the Law Games experience and to set a new standard from which all future Law Games will be compared," said Law Games Co-Chair Patrick Rogers. "And we're thrilled with the results."

The 2007 event marked the 23rd edition of the Law Games, which began as a one-day hockey tournament and has evolved into both athletic and academic competitions.

The Law Games is the largest annual gathering of law students in Canada.

Law students share research at human rights conference

Two Western Law students had the unique opportunity of sharing their research at a national conference focusing on international human rights. Alexandra Carr and Matthew Stroh were selected through a com-

petitive process open to all Canadian law students. They presented their papers at Global Generations: Legal Perspectives on International Human Rights Law, a conference hosted by the Canadian Lawyers for International Human Rights in Ottawa on February 8.

Stroh was inspired to write his paper, "Is the Doctrine of Sovereign Immunity Compatible

with Universal Jurisdiction for International Crimes?" after reading about several high-profile human rights cases involving Canadians who were tortured abroad, including the Bouzari, Sampson and Arar cases.

"The defendant state-actors in all of these cases were held to be immune from civil liability on the basis of the doctrine of sovereign immunity," says Stroh. "I believe that this is an impor-



Matthew Stroh



Shane Gonsalves and Dan Chapman at the American Bar Association's Regional Negotiation Competition last November

Western Law negotiation team scores internationally

Building on Western Law's traditional success in negotiations, students Dan Chapman and Shane Gonsalves placed third at the International Negotiation Competition held in Singapore during the first week of July. The competition was held at the Singapore Supreme Court, and hosted 16 teams from around the world. Over the course of the week, Western competed against teams from Australia, Ireland, New Zealand and Singapore.

Western's team was chosen to represent Canada after the American Bar Association's Regional Negotiation Competition, held at Western Law last November.

The Western team also won an award for Best Cooperative Problem-Solving in a Multi-Party Negotiation for their performance in a 4-way negotiation involving the exchange of endangered animals for ecological and tourist purposes. The competition was won by a team from University of Leicester representing England and Wales. The Australian

team from University of Queensland came second.

Professor Erika Chamberlain, Director of the Torys LLP Negotiation Competition, is thrilled that Western students continue to give outstanding performances on the international stage. "Their result is even more impressive considering that Shane and Dan have just finished their first year of law school, and competed against some teams comprised of law graduates," she said.

"It was great meeting law students from other cultures," said Shane Gonsalves. "Everyone brought unique skills to the table which provided a huge learning experience."

Western is grateful to Torys LLP for sponsoring Western's internal negotiation competition and for sponsoring Shane and Dan at the regional and international competitions. Special thanks to Danial Lam ('02) for providing coaching assistance for the international competition.

tant but frequently overlooked area in international human rights law."

Carr's public international law paper is called "From the Responsibility to the Right to Protect: Acceptance as a Principle of International Law and Application in Darfur." Says Carr: "My interest in human rights is one of the reasons I went to law school. This opportunity strengthens that interest; it's an honour to present at the conference."

The Canadian Lawyers Association for International Human Rights (CLAHR) was established to protect human rights internationally through the use of law and legal institutions.



A trip to the City of International Law

One of the goals of Western's International Law Association is to bridge the gap between the dream and reality of working in international law. That goal motivated Prof. Valerie Oosterveld and Western Law students Lindsey Aufricht and Phil Millar to organize a reading week trip for 30 students to The Hague, Netherlands, better known as the "City of International Law."

news of the school

Top prizes for Western Law Students in national writing awards

Two Western Law students have been awarded first and second place in the Insolvency Institute of Canada Law Student Writing Awards.

Marie Bruchet was awarded first prize and \$5,000 for her paper, "Director Removal and the CCAA". Her paper examines proposed amendments to the Companies' Creditors Arrangement Act ("CCAA") that would provide courts with an express power to remove directors during restructuring proceedings. The paper claims that proposed director removal scheme has serious flaws and should not be adopted as part of Canadian insolvency law. The objectives of the CCAA are better served by the existing Canadian statutory framework.

James Mangan was awarded second place and \$3,000 for his paper, "What Is 'Deepening Insolvency' and Should It Come to Canada?". Emerging in the United States, a claim for "deepening insolvency" holds individuals liable for prolonging the existence of already insolvent corporations by incurring additional debt. While such a claim may help to balance the interests of creditors against those of shareholders during insolvency, the necessity or value of "deepening insolvency" in Canadian law is questionable.

The Insolvency Institute of Canada (IIC) is a non-profit organization dedicated to the recognition and promotion of excellence in the field of insolvency. The purpose of the IIC Awards programme is to stimulate interest among law students in the research and development of papers based on corporate insolvency and restructuring topics and to recognize outstanding achievement in this endeavour.

The two papers were submitted as part of the requirements for Prof Tom Telfer's Bankruptcy and Insolvency course. The IIC will present the first place prize to Marie Bruchet at its annual conference in October 2007 in Napa Valley, California.



From left to right: Matt Norwood (Software Freedom Law Center), Prof. Brian Fitzgerald (QUT), Conference organizer Prof. Mark Perry (Western Law) Joseph Potvin (Treasury Board of Canada) Seated: Stacie LeGrow (Red Hat), Prof. Peter Swire (Ohio State University)

Knowledge policies explored at conferences

In April Western Law hosted two conferences examining knowledge policy in the 21st Century. *Digital Copyright in a User Generated World* examined the challenges copyright law faces in an increasingly user generated environment. Panels discussed recent litigation against YouTube and MySpace as well as voluntary open content licensing models such as Creative Commons. A second conference, *Free/Libre and Open Source Software (FLOSS) as Democratic Principle* focused on the role of FLOSS in enhancing participation, accountability, transparency and security in core democratic software infrastructures. It also explored the economic and social potential of Free and Open Source Software by considering its implementation and adoption throughout the world, in both the business and government sectors.



From left to right: Prof. Chi Carmody, Canadian Director of the Canada-U.S. Law Institute; J. Michael Robinson, Fasken Martineau DuMoulin LLP, Toronto; Margaret Cornish, Executive Director of the Canada-China Business Council, Toronto; Pierre Pettigrew, Deloitte Canada, Toronto; Perrin Beatty, Canadian Manufacturers and Exporters, Ottawa; Richard Cunningham, Steptoe & Johnson LLP, Washington, D.C.

North American Approaches to the New China

A seminar organized by The Canada-United States Law Institute and Western Law in March brought together leading experts to highlight recent developments in the Chinese market and to inspire new ideas on Canada's approach to this emerging market.

The seminar featured speakers who covered a wide-range of subjects con-

cerning business in China today. Topics included Canada's effort to conclude a bilateral foreign investment protection agreement (FIPA) with China and intellectual property protection laws.

The event was co-sponsored by the Toronto office of Fasken Martineau DuMoulin LLP.



Bob Rae delivers the keynote address on the challenge of leadership at the Colloquium on the Legal Profession held at Western Law

Colloquium on the Legal Profession focuses on leadership

The Eighth Colloquium on the Legal Profession, hosted by Western Law on May 25, 2007, explored the challenges of leadership.

In their opening remarks, Acting Dean Craig Brown, Regional Senior Justice Lynne Leitch ('78) and Superior Court Justice Paul Perell each paid tribute to Ontario Chief Justice Roy McMurtry, who retires this year after a remarkable judicial career.

In the keynote address, former Ontario Premier Bob Rae praised the Chief Justice's decision on gay marriage in Halpern as a superb example of courageous and visionary judicial leadership. Mr. Rae told an audience of law students, recent graduates and practicing lawyers that leadership was not the same as prophecy or management. Leadership requires vision and the ability to inspire others to follow.

David Lepofsky, a leading Ontario disability rights advocate, argued that leadership

requires lawyers to share their specialized advocacy skills with those who cannot afford them. He outlined several ways that lawyers can become involved in social causes and suggested how they could be more successful in these efforts. He also argued that law firms need to give their lawyers more credit for doing pro bono work.

One of the sessions of the Colloquium focused on lawyers leading in business. Geoff Beattie ('84), who practiced law at Torys before becoming President and CEO of The Woodbridge Company Limited, revealed that his legal training forms the foundation for his work in business. He identified four stages of leadership: apprenticeship, learning to perform, taking on responsibility and fostering leadership in others by example. He praised his own leadership mentors in law and in business: Jim Tory, John Tory and Ken Thomson.

The Colloquium also featured a panel on legal education, featuring University of Windsor Associate Dean Mary Gold, Diana Miles from The Law Society of Upper Canada and Western Law Professor Stephen Pitel. The second panel, on leadership in the non-profit sector, was comprised of John McKellar QC, David Nash, Claude Pensa QC and Judith Potter. The Honourable Sue Barnes '77, Superior Court Justice Frank Marrocco and Heather Joy Ross ('84) spoke on the leadership and governance. Student Legal Society President Adam Banack was the master of ceremonies for the Colloquium. The Colloquium was co-organized by Justice Paul Perell and Western Law Professors Randal Graham and Stephen Pitel. These colloquia, held twice each year, are organized by the Chief Justice of Ontario's Advisory Committee on Professionalism. 

faculty in the news

Our faculty is frequently called upon by the media to provide Canadians with context and insight into the legal and justice issues of the day.

Prof. Sam Trosow

“There are increased calls for public video surveillance systems by private property owners and public authorities. Many say it’s necessary to deter crime and prosecute offenders. Increased surveillance, they say, is a small price to pay for added security benefits. Besides, they add, if you’re not doing anything wrong, you have nothing to be concerned about. This mindset could lead to an atmosphere where video surveillance of routine lawful activities becomes



more accepted by a public that has been desensitized

to the erosion of privacy, freedom of association, and anonymity. Video surveillance systems should be used only under exceptional circumstances.”

Sam Trosow, an expert in Intellectual Property law and Privacy and Censorship issues, in a commentary on the use of public video surveillance systems for Sun Media in May, 2007.

Daniel Sandler

“If there is any thought an investor is going to get away by going under the radar screen, I think the chances of that are slim to none. The Canada Revenue Agency issues a warning every year to be wary of

charitable tax shelters. One part deals specifically with leveraged (or loan-based) donations,” such as



the one Singh has been stumping across the country

to promote. (...)The revenue agency will investigate to see whether there is a nudge, nudge, wink, wink, or some other agreement that gives the donor some sort of opt-out ... that may be sufficient for it to constitute a sham.”

Tax expert Daniel Sandler quoted in The Toronto Star in December on a charitable tax shelter that experts warn could run afoul of federal tax laws.

Prof. Chris Nicholls

“The Rankin ruling is certainly a disappointment for the Ontario Securities Commission, but the fact they demonstrated a willingness to pursue vig-



orously a charge of this type also sends a message to the Street

that they are seriously in the enforcement business.”

Chris Nicholls, an expert in Corporate and Securities Law as quoted in The Globe and Mail on the court ruling ordering a new

trial for former investment banker Andrew Rankin.

Prof. Chris Sherrin

“It’s a very significant time for Mr. Truscott; he’s finally got his chance to go back in court and argue his case again. This is his chance at undoing his conviction. An acquittal would mean that the court was persuaded that a jury could not find Truscott guilty



beyond a reasonable doubt. To many, including those

who have been wrongfully convicted, an acquittal just doesn’t add up to exoneration. I wouldn’t be surprised if, even assuming he wins, he intends to obtain further exoneration, in the form of a public apology, public acknowledgment of his actual innocence.”

Chris Sherrin, an expert in the Criminal justice process comments on the Stephen Truscott case on CBC Radio in May, 2007.

Prof. Grant Huscroft

“There is a great tendency to downplay the significance of the court’s power under the Charter to strike



down legislation. ... [There is] talk about “dialogue”

and the courts’ decisions not being final, but that is an after the fact rationalization of judicial power.”

Constitutional law expert Grant Huscroft speaks about the 25th anniversary of The Charter on TVO’s The Agenda in December, 2006.

Prof. Michael Coyle

“At the current rate it will take 50 years for the federal government to resolve all the claims that have already been filed by native groups. The average claim was filed about 16 years ago. People with justifiable legal claims against a gov-



ernment feel frustrated because they are being treated like

second-class citizens. They may feel they need to do more to get public attention to the grievance so that they can have it addressed.”

Michael Coyle, an expert in Native land claims, is quoted in the London Free Press in April, 2007. ☞

new faces at western law

Western Law welcomes three new outstanding scholars to the school.



Andrew Botterell

Andrew Botterell has been jointly appointed to the Faculty of Law and Department of Philosophy. He holds a B.A. (Hons.) from McGill and received his Ph.D. from MIT where his thesis, entitled "Analysis in Mind", focused on issues in philosophy of mind. While teaching philosophy from 1998-2003 at Sonoma State University, a small public liberal arts college in Northern California, his research interests turned to issues in ethics and legal theory. He took a leave of absence to pursue his J.D. at the University of Toronto. During the 2006-2007 academic year he clerked for the Honourable Madam Justice Louise Charron of the Supreme Court of Canada. His legal research interests are in philosophy of law, private law, criminal law, and legal theory. "I enjoy the conceptual aspects of philosophy and the practicalities of the law," he says. "I think it's important for students to think about abstract issues. Good lawyers should appreciate the importance of theory." As an avid cyclist he's thrilled that London is home to one of only three indoor velodromes in North America. His wife, Carolyn McLeod, is a Professor in the Philosophy Department at Western.



Margaret Martin

Margaret Martin brings a rich understanding of jurisprudence to her new position at Western Law. In 2007 she received her Master's in Legal Studies at the University of Toronto. Prior to that she defended her Ph.D. entitled "Raz's Exclusive Legal Positivism: The Tension between Law and Morality" at the University of Cambridge. Her doctoral studies were supported by the Social Science and Humanities Research Council of Canada, the Cambridge Commonwealth Trust and the Overseas Research Scholarship. Margaret also holds an M.A. in philosophy from McMaster University. Her main research interests are in legal philosophy, criminal theory and international human rights. "I had the privilege of studying the philosophical aspects of law for many years and I want to show students how an understanding of jurisprudence provides insight into the practical workings of the legal system." Margaret said she felt "instantly comfortable" at Western Law. "The Faculty is very interested in intellectual debate. I look forward to sharing my ideas and learning from my colleagues." Margaret will be teaching Philosophy of Law and co-teaching Global Justice and International Law.



Sara Seck

Originally from St. John's, Newfoundland, Sara received her B.Mus. from Memorial University and her M.Mus. from the University of Ottawa. She worked as a successful recording and performing musician in Ottawa for six years. While at the University of Toronto law school she developed an interest in transnational regulation and corporate social responsibility. After articling on Bay St. she began her Ph.D. at Osgoode Hall in 2001, focusing upon Canada's obligation to regulate Canadian mining companies operating internationally for compliance with international environmental and human rights law. Her research interests more generally include corporate social responsibility, international sustainable development law, and third world approaches to international law. In 2006, Sara was invited to participate in an experts meeting with the Special Representative to the UN Secretary-General on Business and Human Rights on the question of whether corporations have obligations under international human rights law. She is looking forward to bringing a social justice perspective to business law. "Western is known as a solid business law school and for being internationally engaged. Since my work involves global perspectives I think it's a very good fit." 

distinguished speakers

During the past year Western Law invited a variety of speakers to provide unique perspectives on the law and current events.



Justice Marshall Rothstein

Justice Marshall Rothstein

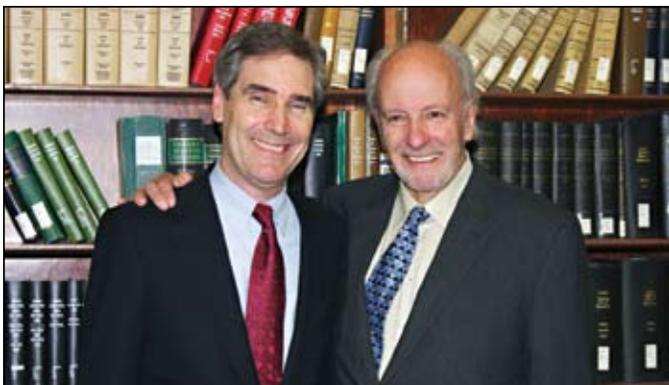
Marshall Rothstein, Canada's most recently appointed Supreme Court Justice spoke at the law school in February. Rothstein told a capacity crowd that he did not think the new nomination process Supreme Court justices would lead to the politicization of the Court.

"I don't think we will ever go back to a less public process for Supreme Court nominations. The current process demonstrates that a lot of work has gone into reviewing candidates and that there are a number of good, strong candidates for the position. If that results in greater confidence in the judicial appointment process... that would be a good thing. I also think it could help provide insight into the work judges do and may even help demystify us. In court, we wear robes and have certain titles... but when we come home we still have to open a can of tuna fish and empty the dishwasher."

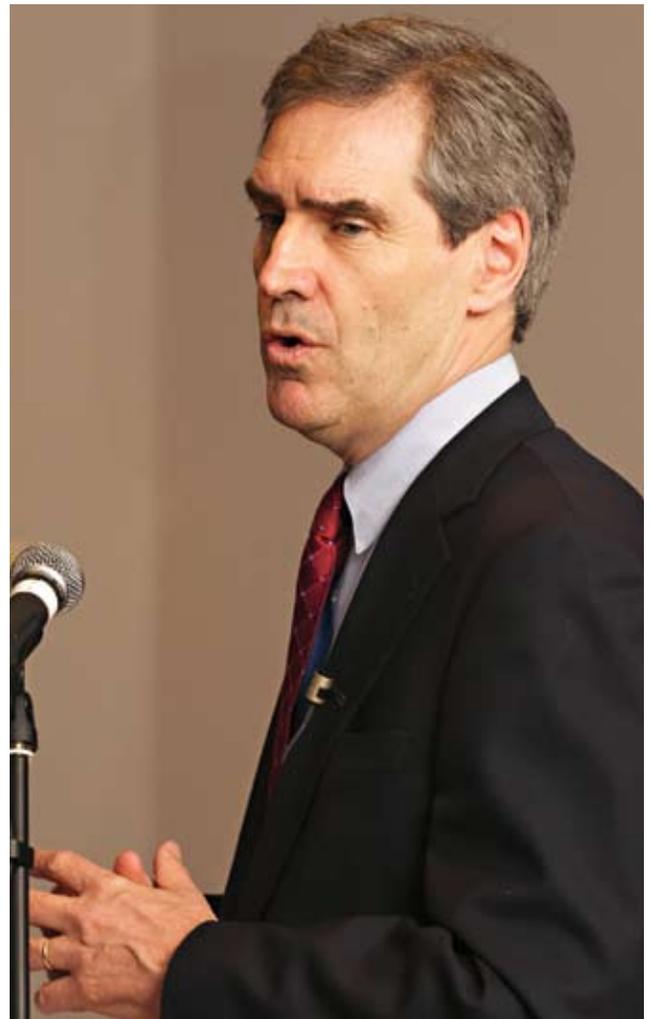
Michael Ignatieff

Michael Ignatieff, The Deputy Leader of the Liberal Party of Canada and renowned writer, scholar, and journalist delivered the inaugural Claude and Elaine Pensa Lecture in Human Rights. The series was established in honour of the 50th anniversary of Claude Pensa's call to the bar. Ignatieff spoke on the topic "Standing up for human rights: the Canadian Challenge"

"Human Rights are universal. The beliefs that make us fight for human rights are very much anchored in the national political cultures we are a part of. One of the reasons Canada has been a leader of human rights is that human rights convictions are anchored in our history, and it is worth remembering that. Though we have a long history of connections with human rights, Canada is at a crossroads of where our future will be in leading the continued fight of international human rights. The world is watching what Canada does about these issues."



Michael Ignatieff with Claude Pensa at a reception in the Law Library following the Lecture



Michael Ignatieff



Judge Philippe Kirsch

Judge Philippe Kirsch

Judge Philippe Kirsch, President of the International Criminal Court spoke on the “Challenges and Prospects of the International Criminal Court”.

“The court faces many challenges including the safety and security of its staff but is beginning to establish a reputation as a deterrent to violence in war-torn countries like Uganda. It is now generally recognized that if there had not been arrest warrants, the Lord’s Resistance Army would never have started the peace process, and the peace process did lead to a tremendous reduction in the commission of crimes.”



Robert Glauber, past Chairman and CEO of the National Association of Securities Dealers and former Undersecretary of the U.S. Treasury for Finance (1989-92) under President George H.W. Bush spoke on the topic; “Is the U.S. Losing its Leadership in the Securities Industry?” The lecture was generously sponsored by Torys LLP.



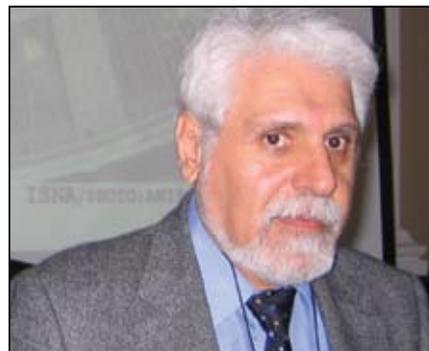
Hugh Segal The former chief of staff to Brian Mulroney spoke on the notwithstanding clause.

“The time has come for a real debate about the notwithstanding clause in Canada’s Charter of Rights and Freedoms. The notwithstanding clause is the elephant in the room. Canadians have developed a fear about the clause and believe its use is an intrinsically bad thing,”

Justice Brian Lennox The Ontario Court of Justice spoke on The Law and the Courts in the 21st Century. Lennox explored the state of criminal law, litigation within the courts and the role of the courts and of the Charter in the Canadian Constitution.



Jeffrey Manishen The criminal defence attorney and professional actor used scenes from well-known courtroom dramas to explain where fact ends and fiction begins and demonstrated how to be a better trial lawyer by studying Hollywood’s top performers.



Houshang Bouzari President of the International Coalition Against Torture and his legal counsel Mark Arnold spoke on

“Litigating Torture in the Ontario Courts: The Case of Bouzari v. Iran”. Bouzari recounted his horrific ordeal of being kidnapped, imprisoned and tortured in Iran in 1993 and his attempt to sue Iran in the Ontario courts for compensation arising out of his treatment.



Michael J. Bryant The Attorney General of Ontario, spoke to students about access to justice and the measures he has established to increase funding for legal aid in Ontario. 





Making their mark

Meet Laurel Broten '93,
Andrea Daly '94, and Michelle
Lally '90, three alumnae who
have achieved remarkable
success early in their careers.

Laurel Broten '93, Andrea Daly '94, and Michelle Lally '90 share a laugh outside of Union Station in Toronto



Leading the way

The Honourable Laurel Broten '93 envisions a clean, green, innovative future for Ontario

When The Honourable Laurel Broten was appointed Ontario's Minister of the Environment by Premier Dalton McGuinty in 2005, she was six months pregnant with twins. "The Premier knew, perhaps more than I did, how committed I would be to this file," she says. "There was never any doubt in his mind that I could balance both. It gave me incredible motivation."

As a mother of two boys and the leader of perhaps the most high-profile and complex portfolio in the Ontario government, Broten's hands are full. Ryan and Zachary, now almost two, are thriving. As an MPP and Minister, Broten has a track record of strong advocacy and action.

Broten has never shied away from leadership. Growing up in Saskatchewan, Alberta, Quebec, and Ontario, she was strongly encouraged by her parents and other family members to get involved in politics and public service. Another big supporter has been her husband Paul, whom she first met as a fellow candidate in a student government election at McMaster University. When asked who won, Broten says with a smile, "We like to think we both did."

Her interest in politics steered her towards a legal education, and she chose Western Law because of its excellent reputation. While at Western she volunteered at the Community Services Legal Clinic, an experience she describes as "amazing." Recently Broten paid tribute to Western Law and the impact it had on her life in an address to the Class of '07 graduation ceremony. "A legal education gives you the freedom to do whatever you desire," she told the new grads. "Look forward to every stage of your career and enjoy the ride."

Broten's experience at Western inspired her to seek an articling position at the Supreme Court of Canada, where she clerked for Madame Justice Claire L'Heureux-Dubé, a powerful advocate for human rights. "She instilled in me an ideal of fairness that will always endure," says Broten. "To work with someone you admire, who is making really significant progress on issues that you care about, like child witness testimony, was incredibly powerful and inspiring."

Broten went on to a successful career in civil and commercial litigation in Toronto. She first ran for public office in the provincial election of 1999 as the Liberal candidate for Etobicoke-Lakeshore. She ran again in 2003 and won. She served as Parliamentary Assistant to Premier Dalton McGuinty before being appointed to her current position. "Environment is a very legislation-heavy portfolio," she says, "so my legal background has been invaluable."

Broten believes that climate change is the defining issue of our generation. "These are transformational times, not just in Ontario, but around the world," she says. "No government can take on the challenges alone. How we deal with them will determine the kind of world our children will inherit from us."

As Minister she takes a "hands-on" and "pragmatic" approach to the environment. "I've never seen it as something that is separate from being a good mom, an informed consumer, or a responsible citizen," she says. Since taking office, Broten has led a number of initiatives designed to improve and protect air and water quality in Ontario. She has organized and helped co-host, along with the Premier, three Shared Air Summits on transboundary air pollution, smog and climate change. These summits have built important cross-border partnerships and brought together world experts on air pollution. At the most recent summit this June she joined the Premier in launching a clean air and climate change plan that includes very aggressive greenhouse gas reduction targets, which will clean up Ontario's air, encourage innovation, and help Canada meet its Kyoto commitments. This plan includes the elimination of coal-fired power generation in Ontario by 2014 - and a draft regulation that would see this commitment turned into law. Broten has also introduced comprehensive legislation to protect the province's drinking water and fresh water resources.

Broten believes that these initiatives are just the beginning. "It's a complex portfolio, and I'm required to make a lot of complicated decisions," she says. "But what counts most is being able to relate to Ontarians who care, as I do, about making sure we are protecting our environment for today and the future."

She is not concerned about naysayers who claim that efforts to combat global warming will result in damage to the economy and our standard of living. "I don't buy it," she says, "and neither does the Premier. We believe that a strong economy thrives on research and innovation. Becoming a leader in green technology will translate into more jobs and continued prosperity for communities all across Ontario."

As a steward of the environment, Broten is charged with a responsibility that comes naturally to her. "My grandmother always told me, "Take good care of what you have been blessed with."



On top of the competition

With Mergers and Acquisitions red-hot, Michelle Lally '90 finds that competition law is a fun place to be

Among the many things that Michelle Lally has loved about her career at Osler's is her contact with law students. As a past Chair of the firm's student committee, she has helped ensure that aspiring lawyers work in a stimulating and supportive environment. "Students are the lifeblood of our firm, so they're critically important to us," she says. "They've also kept me in touch with what's going on in leading law schools like Western."

Lally inherited a love of the law from her father, a Judge of the Superior Court of Ontario. "We are a lot alike," she says, "and I saw how much he enjoyed the practice of law." At Western, she discovered a strong affinity for business law. She met her future husband, Craig Webster, also a Western Law graduate, at the Law Games ski trip to Quebec.

Between her second and third years at Western, she worked as a summer student at Osler's. After articling with the firm, she became an associate in 1991, and is now a partner and a member of the Executive Committee. She enjoyed her early experiences in litigation and corporate, but the first competition file that landed on her desk really got her hooked. "Public policy has always been an interest of mine, as well as economics and the proper functioning of markets," she says. "Competition law encompasses all of those things so I was immediately attracted to the area."

For the first few years her practice was a mix of competition law and mergers and acquisitions, but then she moved into the Competition/Antitrust Law Group on a full-time basis. Along the way, she also completed a Masters in International Trade and Competition Law from Osgoode Hall.

Canada's competition bar really got its start with the Competition Act of 1986. Over the years it has matured into a highly specialized group that today is widely respected internationally, and plays an active role in organizations like the Organization for Economic Co-operation and Development (OECD), and the International Competition Network (ICN).

With the economy in the midst of a takeover boom, competition law is a hot topic. "It's something that is on every client's radar screen," says Lally. In her practice, she helps merging parties navigate their transactions through the Canadian Competition Bureau and also advises clients on the competition law implications of their current and proposed trade practices and pricing strategies. Because most

mergers and acquisitions involve companies that have operations beyond Canada, she also works with international lawyers to navigate anti-trust rules and regimes around the world. "That's one of the things that make this area challenging and interesting," she says.

In addition to her busy private practice, Lally contributes to the development of public policy to ensure that competition law principles are fair and effective. She is a member of the executive committee of the National Competition Law Section of the Canadian Bar Association, which is involved in advocacy and policy activities.

Recently, Lally was recognized by Lexpert as one of the "Top 40 Under 40" in legal practice in Canada, and as one of Canada's "Top 15 Women to Watch." Lally takes these accolades in stride. "Fame is fleeting," she says with a laugh. "But it feels good to know that clients have said good things, which means I must have contributed meaningfully to their goals and objectives."

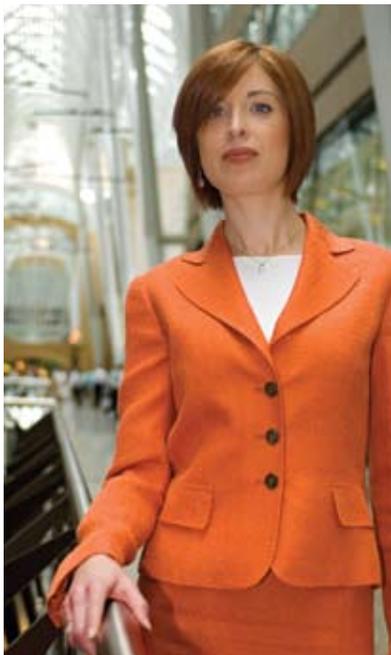
The real highlight of her life, says Lally, is her two children, Zach, four, and Katja, one. She and her husband enjoy an active lifestyle, and spend many of their weekends at Georgian Peaks in Collingwood. "We play, bike, ski, hike, and hang out together, Zach has been skiing since he could he walk."

Lally retains a strong connection with Western Law through the people she met there. "It was a lot of fun," she says. "I made many good friends, and I still keep in touch with them." Recently she played an important role in raising generous gifts from both Osler's and the firm's Western Law alumni for the School's capital campaign.

When recruiting young lawyers, Lally tells them the profession has come a long way in accommodating work-life balance, especially for women with young families. "The future looks good for women in the law," she says. "There is a real war for talent now, and firms know that they simply cannot afford to lose excellent women. My advice to young women: law is an exceptionally rewarding career."

"Public policy has always been an interest of mine, as well as economics and the proper functioning of markets"

Michelle Lally



A perfect match

Andrea Daly talked Onex into creating the perfect job, then hiring her for it

When Andrea Daly was named one of the “Top 40 Lawyers Under 40” by Lexpert in 2006, she enjoyed an unexpected benefit: the chance to reconnect with her friends from Western Law. “The people who came out of the woodwork from my Western days were really terrific,” she says. “It made me realize that these were some of the deepest relationships I had. When they come back to you they’re very fulfilling.”

Daly grew up in St. John’s, Newfoundland, with parents who did everything possible for their children to get the best education. After doing an undergraduate degree at Dalhousie, she decided on Western Law because she liked London and the academic focus of the School. “I enjoyed everything about Western Law,” she says. “The Faculty members were terrific and there was a great mix of students.” After first year, Andrea concentrated on business oriented courses. “The upshot is that I came out of law school as prepared as I could be for practice.”

“I called them and told them it was about time they created a general counsel position, and it should be me...”

Andrea Daly

After articling at Davies, Ward, Phillips & Vineberg she joined the firm in 1995, and began a practice that focused on mergers and acquisitions, corporate finance and private equity transactions. Soon she became involved in some of the most high profile, contentious, and precedent-setting deals in recent Canadian history.

One of the clients that tested her mettle was Onex Corporation. She was involved in its attempts to take over Labatts and Air Canada, as well as a number of acquisitions, such as Celestica. She also was lead counsel for Onex when it established its first private equity fund.

In 2004, Daly approached Onex with a merger proposition of her own. She had just returned to practice after the birth of her second child, and she was looking for more flexibility. Onex was the perfect fit for her skills and experiences. Although it was one of the largest corporations in Canada, it had no lawyers on staff. “I called them and told them it was about time they created a general counsel position, and it should be me,” she says. Two days later she had a job.

A public company, Onex buys businesses and builds them through partnerships with management. Over the years it has made major purchases in many

different industries, including electronics, airlines, communications, entertainment, aerospace, imaging, and health care.

Daly’s job as general counsel is a “mixed bag”, she says, giving her the opportunity to get involved in new deals that fit her interests and talents. She tends to focus on the acquisition of public companies, and managing relationships with partner firms on joint acquisitions. She’s also responsible for all the public company work of Onex, including compliance and governance issues.

One of Daly’s first challenges after joining Onex was to overcome a somewhat negative perception of lawyers. Daly worked hard to show that she could bring something constructive to the table, rather than just pointing out difficulties. “The job of an in-house counsel is to get to a good business result when problems arise,” she says. “The people around here now understand that I’m not going to jump up and get in their way unless it’s really essential that I do that.”

Her approach seems to be working. In 2005, Daly was named by Lexpert as one of the top 40 corporate counsel under 40. This honour was capped the following year by being named one of the top 40 lawyers under 40.

Daly attributes these accolades to the “perfect match” she’s made with Onex. “This firm has a ton of visibility, so being general counsel here has given me a top-of-mind element,” she says. She also credits her success to the fact that she’s had very good relationships with the lawyers she’s worked with over the years.

With two boys, ages six, and three, Daly doesn’t have time for anything else other than work and family. Still, she values the little bit of flexibility her job has provided. “The move from private practice to in-house didn’t make a dramatic change in lifestyle, but it feels like a huge difference,” she says.

Although law can be a very demanding career for a woman with children, she believes that a law degree is a great education for many career paths. “The thought processes and people management and negotiation skills you learn are incredibly useful, no matter what you end up doing,” she says. “You’ll never be constrained by a law school education.”



Judy Rich is proud of the exceptional pro bono tradition at Western Law

A helping hand

Pro bono is thriving at Western

In January 2007 Canada's ex-ambassador to the United Nations, Alan Rock, presented a report to the UN about child soldiers in Sri Lanka. The Report was based on research about children trapped in armed conflict, conducted by Western Law students.

This research, supervised by international human rights professor Valerie Oosterveld, was just one of many innovative projects of Western's Pro Bono Students Canada (PBSC). PBSC is a national program dedicated, in its words, to the "noble pro bono tradition" of the legal profession. The Western Law chapter, launched in 1999, now has the second largest program among Canadian law schools. In 2007, it involved 130 students serving some 40 organizations (see sidebar).

Judy Rich, last year's coordinator of the program, is one of eight members on an all-student executive board. "PBSC matches volunteer law students with not-for-profit agencies that need legal expertise but don't have the money to pay for it," she says. "We are passionate about helping other people."

Beneficiaries of the PBSC include public interest and community organizations, tribunals, clinics, and lawyers doing their own pro bono work. The program is supervised by two faculty advisors, Doug Ferguson, Director of Community Legal Services (CLS), and Margaret Capes, CLS Review Counsel. Second and third-year students in the program mentor first-year students, and do more advanced research.

Students are expected to volunteer about three hours a week, to a maximum of 10 hours a month. "We try to foster a pro bono culture and mentality at the School," says Rich, "so students carry their experience with pro bono into their practices as lawyers."

Western's pro bono program has been so successful that it's become a model for other law schools, says Rich.

Another of its innovative projects takes place at the London Court House through Family Court Duty Counsel. Students assist legal aid lawyers in interviewing clients and helping fill out forms. "This can be a very devastating time in people's lives," says Rich, "and to know that we've helped them is a positive experience."

Rich is proud of the scope and variety of the program. "We try to branch out and work with many different groups," she says. "It helps us as students to become more in tune with what is happening in the community, and know what groups are out there and need help." Western's pro bono chapter has also made contact with many local lawyers, who help supervise the program's research projects.

In addition to giving students real-practice experience, Rich believes that the program helps small not-for-profits get good exposure and valuable information. "What we do may seem like a small step, but it makes a huge impact." 

Pro Bono at Western Law

2006/07 Pro Bono Students Canada (PBSC) of Western Law served 40 not-for-profit organizations including:

- Meals on Wheels
- Single Women in Motherhood Training
- Youth Opportunities Unlimited
- Association of Iroquois and Allied Indians
- International Justice Mission
- Thames Valley Children's Centre
- Thames Region Ecological Association
- Anago (Non) Residential Resources Inc.
- Community Law School
- Community University Research Alliance on Mental Health and Housing

PBSC is funded through grants from the Law Foundation of Ontario and McCarthy Tetrault LLP.



The Charter

years later

Queen Elizabeth II signs Canada's constitutional proclamation in Ottawa on April 17, 1982 as Prime Minister Pierre Trudeau looks on

When Queen Elizabeth affixed her signature to the final papers at a rain-drenched ceremony on Parliament Hill in 1982 it marked the beginning of a new relationship between the individual and the state.

For a quarter century, The Charter of Rights and Freedoms has been a driving force of change. For many, it is the document that defines us as a nation.

Western Law Professors Grant Huscroft, Melanie Randall and Bradley Miller debate the impact the Charter has had on our political system and on the promotion and protection of human rights in Canada.

What impact has the Charter had on the Canadian political system?

Grant Huscroft



The main impact of the Charter stems not from anything in it, but from the Court's approach to interpreting it.

Charter rights are expressed in broad, general terms, and there is room for reasonable people to disagree in good faith about how they should be interpreted. The more broadly the Court interprets

Charter rights, the more

it expands its role in the constitutional order. The Court's expansive interpretation of section 7 - the right not to be deprived of life, liberty, or security of the person except in accordance with the principles of fundamental justice - is a good example of the problem. It has encouraged Canadians to turn to the Courts rather than the democratic processes for solutions to things like shortcomings in the medicare system.

Judicial review works well for some things but it is a blunt tool for making public policy, and I have real misgivings about judicial solutions to political problems.

Melanie Randall

The expanded judicial review of government action conferred upon courts in relation to the Charter is precisely required by the text of the Canadian constitution, a political document and a product of the political process. Charter rights are properly expressed in broad terms and the Courts are properly interpreting them expansively in some contexts. However, overall my concern is the opposite - it is too difficult to mount a Charter challenge and there are not enough of them. Charter challenges do not bypass the democratic political process, they are, indeed a specific component of it, and this is a productive and dynamic process for the resolution of social problems.

If anything, the Supreme Court has been too timid in its section 7 analysis - while Gosselin left the door ajar, so to speak, section 7 has yet to be interpreted to recognize social condition and economic rights. Social change has been agonizingly slow for those whose lives have been limited and damaged by inequality, intolerance and even hatred - gays and lesbians being only one obvious social group. Without the protection of the Charter and left only to the "protection" of the legislatures, the rights of groups such as gays and lesbians, would remain profoundly trampled.

Bradley Miller



It is easy to overstate the democratic bona fides of judicial review under the Charter. The mere fact that the Charter was enacted democratically cannot insulate judicial review from criticism based on democratic concern. After all, as Jeremy Waldron has colourfully argued, if a legislature voted to transfer its powers to a dictator,

we would hardly call the resulting dictatorship democratic.

The Supreme Court of Canada likes to describe its role in the political process as a dialogue with the other branches of government. Legislatures are thought to maintain the last word; they can take the Court's guidance and draft new legislation, it is said, or use the notwithstanding clause.

The picture is appealing. But while "Charter dialogue" has become an orthodoxy in Canadian constitutional circles, it rests on an unrealistic view of the nature of democratic decision-making and the practical restraints on other branches of government.

It significantly undersells the power of the courts to create a new, entrenched, status quo. If one doubts the impact of the Charter - and the judiciary - on the political process, consider the process by which Canada came to be the only western democracy without legal restraints on abortion at any time or by any method, and the factors that have made legislating on this issue impossible.

"The main impact of the Charter stems not from anything in it, but from the Court's approach to interpreting it."

Grant Huscroft

What has been the impact of the Charter equality guarantee?

Melanie Randall

More than two decades of Charter equality rights jurisprudence reveal that the Supreme Court's commitment to "substantive equality," has proven more chimerical than real.

Section 15 has perhaps been most important and positive in terms of protecting the rights of gays and lesbians. Despite the persistence of homophobia and discrimination, often justified by appeals to religious dogma, the section 15 equality rights guarantee has legally enshrined recognition of →

same sex relationships, including the right to marry. The legal victories of gays and lesbian stand at the cutting edge of equality jurisprudence in Canada, and, in fact, internationally, and these victories represent the most unambiguous section 15 success story.

However, the Charter's equality guarantee has been only modestly successful in terms of the ground of disability, as Eldridge demonstrates, and unsuccessful in terms of addressing poverty and social and economic rights, as in Gosselin. Perhaps most surprising and disappointing is that section 15 has been almost a complete failure in terms of advancing claims directly addressing women's rights to equality. With no successful Charter challenge for women in more than 20 years, the Charter record on remedying gender inequality is dismal.

"With no successful Charter challenge for women in more than 20 years, the Charter record on remedying gender inequality is dismal."

Melanie Randall

The Supreme Court has yet to deliver adequately on its robust rhetoric surrounding section 15 and the Charter's promised protection of equality rights.

Grant Huscroft

The Charter is a statement of civil and political rights, and the equality right in section 15 is concerned with equality in the

legal system, not equality in a more abstract sense. Economic rights were deliberately left out of the Charter because they are not justiciable, and it is not for the Court to read them in as Justice Arbour tried to do in Gosselin using section 7.

I think you are bound to be disappointed if you look to the Court for social reform. Most improvements in social justice come from the legislature. Provincial legislation prohibited discrimination against gays and lesbians long before the Court even recognized sexual orientation as an analogous ground of prohibited discrimination under section 15 of the Charter. Legislation has improved the plight of the disabled, the poor, women, and other groups - not judicial review - and responsibility for continued reform lies in the political realm. The Charter wasn't designed to change that.

Bradley Miller

It's always tempting to evaluate constitutions and courts' interpretations of them on the basis of how well they have contributed to the realization of social goals favoured by the deliberator: be it advancement for racial groups, religious groups, the unborn, the aged, sexual minorities, etc.. But the Charter was not intended to effect widespread social change any more than it was intended to bring about a cure for cancer. That simply isn't how bills of rights - or law, more generally - can function in a democratic society.

Groups that have historically had limited success in achieving social change through the legislature naturally turn to the judiciary. Why not? But there is a cost to the polity when translating political and moral issues into legal ones. Not all matters that are properly of concern to the state can be easily and directly translated into the language of rights - or at least of rights that can be readily identified with any particular individual or group. So an emphasis on rights claims can tend to distort and impoverish political decision-making, whether the decision-maker is a court or legislature.

How should courts interpret the moral language of the Charter?

Bradley Miller

Everyone agrees that the Charter is expressed in broad language. Much of it is moral language ("equality", "fundamental justice", "justified" limits, etc.) This sometimes leads to the objection that judges have no greater expertise over these sorts of matters than anyone else; moral reasoning has never been within the specific expertise of judges.

Different judges rely on different theories of political morality when interpreting the Charter and they don't often agree with each other. Justice Wilson, for example, cited John Stuart Mill to support her interpretation that the "basic theory of the Charter" is to avoid "subordinating [individual] choices to any one conception of the good life". Justice Gonthier, on the other hand, agreed with Joseph Raz that "...it is the goal of all political action to enable individuals to pursue valid conceptions of the good and to discourage evil or empty ones."

Where should judges turn when interpreting the moral language of the Charter? Is it acceptable for them to rely on theories of political morality that they believe to be sound, regardless of whether anyone else agrees with them? Should they look to international law? Can they rely on the principles contained in statutes and the common law (even when using the Charter to evaluate those laws)? What sources of morality are in bounds, and which ones are out of bounds?

Melanie Randall

The Charter expresses and codifies a legal commitment to certain core principles and values, but how these are and should be interpreted in concrete instances and in response to particular legal challenges, is necessarily an open question.



Professors Bradley Miller and Grant Huscroft discuss the impact of the Charter

While morality does not depend on religion for its existence, appeals to what the law should do in the name of “morality” are very often fused with religiosity, as is evident in the heated and sometimes hostile debates about women’s reproductive rights including the right to terminate unwanted pregnancies, as well as same sex relationships and the right to marry. In a democratic, secular society committed to pluralism, religion and the law should be strictly separate, as should any particular set of “morals” and the law. Instead concepts of fairness and justice are more suited to legal arguments and analysis.

The relationship between law and morality is a complex and contested one, but in my view the law in general, and the Charter and its language in specific, are not most usefully conceptualized in terms of morals. Nor should the law be thought of as attempting to legislate morality in Canada, but should, instead, be seen to speak to and

uphold fundamental values and norms around which our society is organized. Equality is one of these foundational norms, as are the rights to free speech, association, life, liberty and security of the person, among others the Charter enumerates.

Grant Huscroft

Canadians didn’t agree on things like capital punishment, abortion, euthanasia, and a host of other difficult moral issues when the Charter was drafted - we probably never would. We finessed our disagreement by agreeing on broad principles.

The Charter doesn’t mandate any particular interpretive theory, and I think it is inevitable that the decisions of individual judges will reflect their moral values to some extent. That is one of the problems with judicial review. Appointments to the Supreme Court of Canada matter, and I expect the controversy over judicial appointments to increase over the years, given the centrality of the Court’s role in our constitutional order.

Putting aside concerns about the ability of judges to engage in moral reasoning, the nature of judicial review discourages them from doing so openly in any event. The Court’s authority depends on it being seen to do law. That is why the Court prefers to cite the decisions of courts from other countries, international law, and legal academic authority in interpreting the Charter. It uses these sources selectively, of course, but that is another topic. ☞

The Tax Man

Long distance cycling helps Prof. Daniel Sandler come up with innovative ideas

When Daniel Sandler was a 2nd year law student at the University of Toronto in the early 80s, he and three friends chose a tax problem for their compulsory moot. They decided on tax, not out of any specific interest in the area, but because tax judgments tend to be short. Ironically, three of the four went on to become tax specialists.

After articling, Sandler worked as a tax lawyer in Toronto. He earned an LL.M at the University of Cambridge in 1989, and returned there to teach in 1992. He joined Western Law in 1995 and is now a full professor. Last year he received his PhD from Cambridge. His research and publications cover a broad range of domestic and international tax issues, with his primary focus in recent years on venture capital incentives. He has written two books that compare venture capital incentives in a number of countries.

Small and medium-sized enterprises (SMEs), particularly in the high-tech sector, are important engines of job creation and economic prosperity. Unfortunately, they also have a high failure rate, leaving many potential investors reluctant to take the risk. In an effort to stimulate venture capital investment, governments around the world have put together a patchwork of incentive programs.

Sandler first became interested in tax incentives for venture capital in 1998 when he co-wrote a paper with a student, Duncan Osborne, on labour-sponsored venture capital funds. They argued that these funds were not a good policy instrument, an opinion now shared by most provinces. This research piqued his interest in different approaches to venture capital incentives in Canada and the United States. The result was his book *Venture Capital and Tax Incentives: A Comparative Study of Canada and the United States*, published in 2004.

Sandler began his research for the book while on sabbatical at the University of California at Berkeley in 1999-2000. It was an exciting time. Nearby Silicon Valley was leading the high tech boom and in early 2000 the NASDAQ Index hit its all-time peak before beginning a precipitous decline. “The venture capital



industry in the U.S. took some hard knocks,” says Sandler, “although it recovered fairly quickly. The much smaller Canadian venture capital industry was not hit as hard, but has never been as robust.”

When Sandler started comparing the venture capital markets in both countries, he was interested in how the U.S. had been able to develop strong clusters of high tech investment, such as Silicon Valley and Route 128 around Boston. “I was surprised to find that there were, in fact, huge amounts of government expenditures at play even in creating Silicon Valley,” he says. “The real hotspots for venture capital in the U.S. are isolated. The vast majority of the country is still a lot like Canada.” Sandler found that there are many similarities between venture capital incentives in Canada and the U.S..

Venture capital covers a spectrum, from the entrepreneur who puts his or her own money into a new business, to the “angel” who provides start-up capital, to the large venture capital funds that invest in SMEs. Venture capital incentives, to achieve their goals, should

be focused on businesses that have the potential to grow rapidly, like new technology. In his book Sandler argues that some of the programs work well, but many are poorly conceived and targeted (see sidebar).

Sandler latest book, *Government Venture Capital Incentives: A Multi-Jurisdiction Analysis*, co-written with Stephen Barkoczy, the leading Australian academic in this area, was published earlier this year.

The book compares venture capital incentives in Australia, the U.S., Canada, the U.K., Singapore, Malaysia, and New Zealand. It began with a project for the Australian government, which wanted to know what other jurisdictions were doing in this area.

In addition to his work on venture capital, Sandler has contributed to tax scholarship on a broad range of issues. An earlier book, *The Taxation of International Entertainers and Athletes: All the World's a Stage*, is a comparative study of the taxation of non-resident celebrities in seven countries. Sandler has also recently published papers on the “overly generous” treatment of employee stock options, the general anti-avoidance rule (GAAR), and, with Prof. Tim Edgar, “rip-off” charitable schemes like “art flips.” He is currently looking at the tax implications of back-dating employee stock options in addition to continuing his comparative research on venture capital incentives.

When he's not spending his leisure time with his wife, Jennet, and two children, Jacob, 15 and Naomi, 13, Sandler is a keen road rider who cycles long distances with a small group of enthusiasts. Every year for the past five years the group picks a day at the end of the season to ride a “U.S. century” (100 miles). “Cycling keeps you fresh,” he says. “It gives you a lot of time to think, and to come up with all kinds of interesting ideas.” ☞

“The venture capital industry in the U.S. took some hard knocks although it recovered fairly quickly.”

Daniel Sandler

Nothing ventured. . .

In his book *Venture Capital and Tax Incentives, A Comparative Study of Canada and the United States*, published in 2004 by the Canadian Tax Foundation, Daniel Sandler evaluates venture capital incentives at the provincial, state, and federal levels. Here is how he rates various initiatives:

Preferential tax treatment of capital gains

“It is unfortunate that both Canada and the U.S. have focused on the preferential tax treatment of capital gains as an appropriate vehicle for increasing informal venture capital investment. The measure is poorly targeted and, indeed, undercuts more appropriately targeted measures.”

Preferential treatment of gains from small business securities

“Canada's \$500,000 capital gains exemption for qualified small business corporation shares does not target the right SMEs. It should be abolished in order to partially fund the costs of an enhanced, but better focused, loss-relief mechanism.”

Angel capital rollover

“The angel capital rollover is a better targeted preference than either of the two above. Various reforms, though, should be considered. The rollover should be available to corporate investors and should apply to preference shares as well as common.”

Preferential treatment of capital losses from small business securities

“Canada can better target this tax preference by limiting it to rapid-growth SMEs, excluding life-style businesses like restaurants and retail operations. However, it should allow the full deduction of appropriately defined business investment losses, rather than only one-half.”

Tax credits for direct investment in SMEs

“Angel capital tax credits are, in my view, a poor response to the market failures affecting SME investment. They may exacerbate the market failures because they attract investors who are ill-suited for venture capital investment.”

Accessing RRSPs for Informal venture capital investment

“I recommend the introduction of an interest-free “venture capital loan” program, along the lines of the existing homebuyers' plan and lifelong learning plan.”

Pension funds and the formal venture capital industry

“Pension funds are key investors for a healthy venture capital industry but are largely absent in Canada. Ideas to attract pension funds include a refundable tax credit, an equity guarantee program, and a requirement that public sector pension funds invest a small percentage of their capital in private VCFs.”

The art of th

On the cover of its January 2007 issue, Lexpert featured four of the country's top deal-makers. Three were Western Law grads. A coincidence, you might ask? Perhaps, but it's certainly not surprising. Western Law has a reputation for turning out lawyers who know how to get it done. We asked William Braithwaite, Dale Ponder and Garth Girvan about the art of the deal.



**William Braithwaite '76
Stikeman Elliott**

What would you rate as your top corporate deal, and why?

In terms of challenge and complexity, I would say the British American Tobacco acquisition of Imasco, Canada's last true conglomerate, in 2001. Imasco owned Imperial Tobacco, Canada Trust, Shoppers Drug Mart and Genstar, a real estate company. My client, British American Tobacco, wanted to own all of Imperial Tobacco but not the other three businesses. So we had to devise a transaction structure that allowed British American Tobacco to acquire the remaining shares of Imasco and at the same time line up purchasers for the other businesses. It took many months to design the deal structure and the better part of a year to execute. There were lots of "firsts" in the transaction, including the deal structure which has been used on a number of occasions since the Imasco deal.

What was the most important thing you learned from that deal?

The big lesson for me was you don't always have to use the old tools. You have to approach each deal on the basis of what will it take to get it done. Don't assume it can't be done just because it hadn't been done before. That's not

to say that I didn't lose a lot of sleep working on the Imasco transaction, but in the end we did come up with a new structure, which even withstood a legal challenge during the deal and in the end, it got us there.

What are the challenges of this kind of work?

You have to know all the rules, the state-of-the-art M&A practices and be on top of your game. You have to know your client and figure out what your client really wants. The recent purchase of Inco is a good example. My client CVRD waited on the sidelines for quite some time trying to pick the right moment to jump into the game. As outside legal counsel, you are there to give both legal and strategic advice, but in the end, it was the client that made the decision as to when to enter the fray. It turned to be exactly the right time.

What qualities does a lawyer need to be a good deal maker?

Your job as lawyer is to take as much of the worry away from the client as you can – in my view, that's one of the reasons why you are there. You're quarterbacking a large deal team. But in the end, your client is looking to you, so you have to know what's going on in every aspect of the deal, every step of the way.

How is the M&A environment changing in Canada?

Over the last couple of years we've seen an incredible opening up of the universe of potential buyers – the entry of new international players. They are a very different group of potential buyers, with both the desire and ability to win. In the days of the Imasco deal, if the buyer of a Canadian public company wasn't Canadian, it was usually someone from the U.S. or maybe the U.K. But today the buyer could be from Brazil, Russia, or Scandinavia.

Right now we're acting for Essar Steel, part of a large Indian conglomerate that we just helped to acquire Algoma Steel.



**Dale Ponder '80
Osler, Hoskin & Harcourt LLP**

What would you rate as your top corporate deal over the past few years?

Without question I would rate the role of lead counsel to Inco in the launch of its multi-billion dollar bid for Falconbridge as one of the most interesting deals I've been involved in over the years. The proposed combination of these two long time nickel rivals triggered a series of remarkable transactions in the mining sector and the M&A competition carried on for over a year. A number of global mining companies were involved in these transactions (Xstrata, Phelps Dodge, Teck Cominco and CVRD), all hoping to participate in the consolidation wave in the nickel and copper sectors.

What was the most important thing you learned from that deal?

The number of interlopers in these transactions produced some remarkable deal dynamics, and isolating a few learnings from an experience of this kind is difficult. I think I would choose to highlight the challenges to completion that became apparent for Inco during its fight for Falconbridge. The most significant

e deal

of these challenges arose by virtue of the difficulties encountered with the European and U.S. antitrust regulatory processes and the significance today of the hedge funds and arbitrageurs in M&A outcomes.

What qualities does a lawyer need to be a good deal maker?

M&A work is compelling because you are advising a client in what is often a transformative transaction and the stakes are usually very significant. This is particularly the case in a competitive M&A situation. What makes a good deal lawyer? I would say that it's important not only to understand the law in this area, but also to have a strong understanding of the client's business objectives and acquisition strategy and to recognize the tactics that will help fulfill that strategy. Negotiation skills and an ability to foresee and plan for possible outcomes are also critical.

What is fueling the takeover boom?

There are a number of factors fuelling the current M&A boom. In some sectors, activity levels are being fuelled by consolidation waves or scarcity of particular types of assets. This has happened in past cycles over the years. The other significant contributors today, however, are the amount of liquidity in today's global economy and the private equity phenomena. There's a lot of money looking for "a home" and searching for returns in the current environment and the combination of industrial or strategic investors with financial investors is making for some very interesting bidding competitions.

How did Western Law help prepare you for your role as an M&A lawyer?

Prior to law my background was in math and science. Law school introduced me to a different way of approaching problem solving and, unlike math and science, gave me an appreciation for disciplines in which there is not necessarily only one "right" answer. I also became very interested in business law in law school and would say that the judgment skills required in law are quite different from the experiences in my earlier university training. Law school laid the foundation to further



develop these skills as I began practice.

Garth Girvan '76 McCarthy Tétrault LLP

What would you rate as your top corporate deal over the last few years?

The merger of Molson Inc with Adolph Coors Brewing Company in 2005, where I represented Molson. It was an \$8 billion transaction, and very high profile. The challenge was to bring together two brewers, one Canadian and the other American, who realized they needed to be part of the worldwide consolidation of the beer industry, but who had strong views of their own place in the world. Each company was controlled by a family who wanted to share future control of the combined company. Yet each company was public and the public shareholders had their own views on how the future should unfold. There were very challenging cross border issues relating to tax, securities, competition and corporate governance.

What was the most important thing you learned from that deal?

Perhaps the most important lesson was that the human element has to be taken into account. Skilled lawyers and investment bankers can do their best to structure a transaction, but personalities quickly become involved. We had to resolve differences between the directors, managements and the families, and then get the public shareholders to ultimately approve the deal.

What are the challenges of this kind of work?

It's very time intensive and the environment changes every day, often within minutes. In the heat of the deal, you have to be quick

on your feet and have the judgment to recognize issues and problems, and then solve them. Clients often don't want to hear about problems or obstacles. Your job is to protect your client's interests and get to the result it wants, but not at the cost of exposing your client to undue legal risk.

What is fuelling Canada's take-over boom?

Companies have restructured their balance sheets and are generally in good financial shape. Cheap money is still abundant. Global consolidation in the mining, technology, pharmaceutical and energy sectors is also a major factor. Perhaps the most significant new development is the emergence of private equity firms in Canadian M&A deals.

Many Canadian firms are acquiring businesses outside of Canada, but we are also losing public corporations to larger foreign players. This may be good for shareholders but not so good for high-level management jobs in this country.

How did Western Law help prepare you for your role as an M&A lawyer?

A good legal education develops the ability to analyze issues and come up with solutions. Clients don't care how complicated a legal issue is, but they do need to understand legal risk in a way that enables them to make a decision. I believe I was given the seeds of this ability at Western law. Though I have directly used some of the knowledge I picked up in corporate and securities law, I believe that I am a better lawyer for having been exposed broadly to other areas, such as tax, criminal law and real property. It's important to have this broad exposure, and Western provided that for me.

What do you enjoy most about practicing in this area?

Every day is different and unpredictably so. I enjoy being involved in high profile deals that are reported every day in the press. I also thrive on the knowledge that my advice can have a major impact on transactions that can have significant consequences and affect the lives of many people.



Prof. Tim Edgar

Prof. Tim Edgar explains why we should not mourn the demise of this financial innovation

In a “man bites dog approach,” Conservative Party Finance Minister Jim Flaherty rallied the troops in his department to summon the courage to finally kill the income trust market. The fatal blow was the Halloween release of draft legislation. But let’s be clear. Nobody who cares, even just a little, about the state of the Canadian tax system should mourn the demise of this product of financial innovation. The question screaming out for an answer is why it took the well-meaning officials in Finance so long to do the deed. I suggest in this little note that the income trust saga proves once again that tax policymaking is class warfare, with reasoned policy analysis the first casualty.

To clearly see the income trust structure as the tax-motivated paper shuffle that it is, we must expose three myths perpetuated by the media. These myths have been fed to a mostly uncritical press by an aggressive lobby group that has included the paper entrepreneurs (investment bankers, accountants and lawyers), organized lobbyists such as the Canadian Association of Income

Funds, and the grey power set. Individuals in the first two camps have profited greatly by creating and marketing the income trust structure as a necessary element in the investment portfolio of the third, whether held directly or through registered pension plans (RPPs) or registered retirement savings plans (RRSPs).

MYTH 1 Income trusts are the product of efficiency-enhancing financial innovation and, as such, are used for all kinds of good non-tax reasons.

Income trusts are tax-driven structures that offer very little in the way of desirable efficiency or equity effects. Although the details of particular income trust structures differ, their common feature is the elimination, or substantial reduction, of corporate income tax by substituting high-yield, subordinated junk debt for shares of a corporation. The substitution allows corporate profits to be distributed as deductible corporate interest expense, rather than non-deductible dividends; it is undertaken

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almost entirely for the available tax saving. In effect, income trusts are nothing more than the Canadian version of leveraged buy-out transactions (LBOs) and recapitalizations of public corporations, which were the subject of much contention (as well as some bad movies and books) in the United States in the 1980s. The junk debt that is characteristic of income trust structures is designed to replicate as closely as possible an equity investment, with the only significant difference being the different tax treatment. As equity in drag, income trust structures have been marketed to the investor class as the equivalent of tax-deductible preferred shares if you will.

MYTH 2 Income trusts have provided the investor class with enhanced after-tax returns.

No Virginia, Santa Claus does not exist and there is no such thing as a free lunch, especially in the ruthless world of capital markets (unless, of course, you're an arb trader, and even then, it's not available long). The tax saving available with income trusts is, in fact, captured to a large extent by shareholders of a corporation who sell their shares in a leveraged acquisition using an income trust structure. This occurs as the price of the tax-favoured asset (the income trust structure in our case) is bid up by purchasers (those acquiring income

trust units). It's strictly a function of supply and demand, and it's a process that tax policy junkies refer to as "tax capitalization." The concept is pretty simple. As an investor, you're willing to pay for an available tax saving right up to an amount that is slightly less than the amount of the saving. The extent of this tax premium that you pay depends on the supply of the tax-favoured asset and the demand for it. It's all a bit daunting to determine precisely as an empirical issue, but you can be certain that your yields on your income trust portfolio have adjusted, in part at least, to give away some of the tax saving, usually to corporate management selling their shares and stock options in a public corporation that converts to an income trust.

MYTH 3 Income trusts do not result in revenue loss, since lost corporate tax revenue is offset by increased personal tax collections.

To debunk this myth, engage in a simple thought experiment. If there is no revenue loss, there must be no available tax saving, so we ask ourselves, in the absence of any tax saving, would the income trust structure exist? No, since everything that can be done with an income trust structure can be done with a conven-

tional corporate structure. Indeed, it can be done better. Hence, there must be some revenue leakage here. Otherwise, a formidable army of clever people would not be engaged in the development and marketing of the income trust structure. The debate about the magnitude of the revenue loss caused by the income trust market is legitimate. But there can be no debate about the existence of such loss. The income trust lobbyists, who have argued that no such loss arises, have committed (or perpetrated) a fundamental analytical error. In particular, the vast majority of individuals hold their income trust portfolios in tax-exempt form: that is, through their RPPs and RRSPs. The personal tax collected on distributions from these plans offsets, in present value terms, the tax saving that is realized by contributing funds on a tax-deductible basis. There is thus no net personal tax payable on normal returns, leaving only the elimination of the corporate income tax by distributing profits as deductible interest expense on junk debt.

This income trust mythology has been spun to cast the structure, at best, in a benign policy light and, at worst, in a positive light. When the component myths are stripped bare, the policy goal should become obvious: as a creature of the income tax system, the income trust must be killed. It just took Finance an inordinately long time to come to this conclusion. There was also considerable equivocation over the weapon to be used.

How does a tax policymaker kill the income trust market? All you need is a legislative regime that realizes consistency of tax treatment of income trust structures and conventional corporate structures. This result could be realized either by lowering the tax on the latter or raising the tax on the income trust structure. In quite a feat, Finance has actually managed to do both, using two sets of legislation. For taxable investors, they first lowered the tax on public corporate structures by enhancing the dividend tax credit for resident individuals. This initiative was introduced in November 2005 by the soon-to-be outgoing Liberal party government. For other investors (non-residents and tax exempts such as RPPs and RRSPs), the tax on the income trust structure has been raised by effectively extending it to publicly-traded partnerships and trusts, referred to as "specified investment flow-throughs" or SIFTs. Despite some gaps in the legislation intended to increase the tax on the income trust structure, we have probably seen the last of it, even though overly generous transitional relief allows trusts in place on October 31, 2006 to live on for four more years – and even grow within specified limits.

Some further reading:

R. Avi-Yonah, T. Edgar and F. Shaheen, *Stapled Securities - 'The Next Big Thing' for Income Trusts? Useful Lessons from the US Experience with Stapled Shares* (2007) vol. 55, no. 2 Canadian Tax Journal 247-88

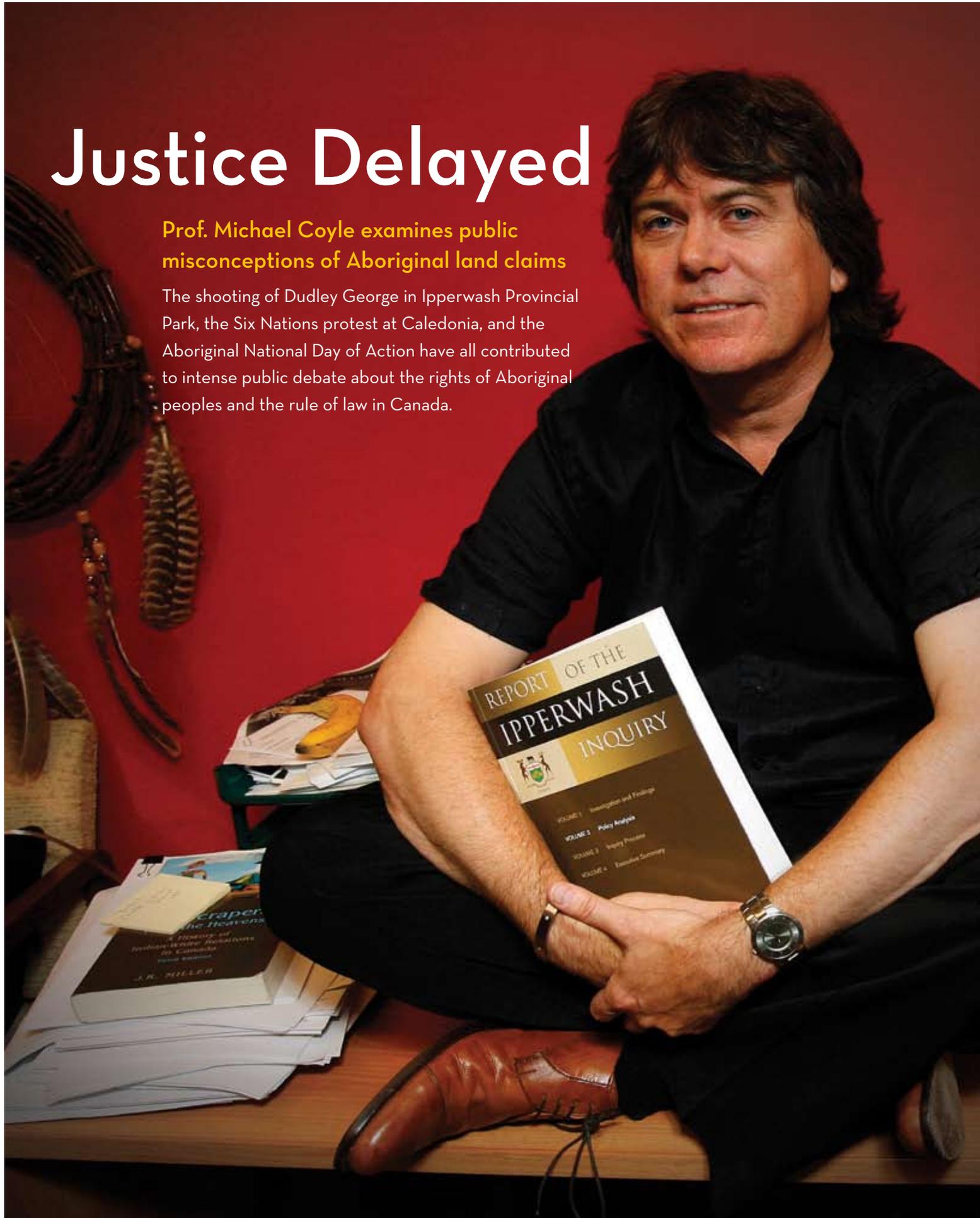
T. Edgar, *Canadian Income Trust Saga: Over, or Headed for a Junk Bond Phase?* (2007) vol. 45, no. 8 Tax Notes International 755-67

T. Edgar, *The Trouble with Income Trusts* (2004) vol. 52, no. 3 Canadian Tax Journal 819-52

Justice Delayed

Prof. Michael Coyle examines public misconceptions of Aboriginal land claims

The shooting of Dudley George in Ipperwash Provincial Park, the Six Nations protest at Caledonia, and the Aboriginal National Day of Action have all contributed to intense public debate about the rights of Aboriginal peoples and the rule of law in Canada.



But these are just the most prominent of more than one hundred “Aboriginal Critical Incidents” that have been reported by the Ontario Provincial Police since 1995. Earlier this summer, Justice Sidney Linden, Commissioner of the Ipperwash Inquiry, recommended sweeping changes to the way governments respond to Aboriginal land and treaty claims. In short, he recommended that the provincial and federal governments take such claims much more seriously, as legal claims, and that they create permanent institutions to allow such claims to be addressed independently and fairly.

It is often difficult to convince Canadians of the merits of governments investing significant resources to resolve Aboriginal rights claims. In my view there are two main reasons the public has not mobilized to insist on a speedy resolution of Aboriginal rights claims. First, the public is generally unaware that Canada does not have an effective process for implementing Aboriginal rights. Second, Canadians are generally uninformed of the legal and historical basis of Aboriginal rights. This problem is compounded by widespread public misconceptions about the history of settlement in this country.

Consider first the nature of the processes Canada has established to implement Aboriginal land and treaty rights. Some 35 treaties were entered in Ontario alone to facilitate the settlement of this province by non-Aboriginal peoples and their co-existence on the land with Aboriginal peoples. These treaties contained promises intended by both sides to be binding, yet no general mechanisms other than litigation have ever been created to permit Aboriginal peoples to enforce the treaty promises or their land rights. Historically, the courts were not a viable forum for First Nations claims. The result is a backlog of unaddressed grievances and mounting frustration.

Willard Estey, formerly of the Supreme Court of Canada, once noted that “disputes, unlike wine, do not improve by aging.” Today there remain hundreds of disputes alleging illegal government interference with Aboriginal lands and treaty rights and many of these disputes are more than a hundred years old. Note that these are legal claims. Each of the land claims filed with the federal and provincial government alleges that the government violated Canadian legal principles. With more than a thousand

such claims now filed against the federal government alone, it is unrealistic to expect all or even most of these claims to be addressed by the courts in our lifetime. That leaves the out-of-court processes for addressing claims filed against the federal and provincial government. The average land claim currently under federal review in Ontario has languished in the review process for more than eight years. If the government ultimately decides the claim has legal merit, the First Nation can expect to pursue negotiations for yet another eight years. And there is no guarantee that there will be any settlement at the end of the process.

All of this is not to take sides on the merits of a particular Aboriginal claim. Or to defend the tactics adopted by a particular protesters. But is useful to recall, as the Ontario Court of Appeal did in relation to the Caledonia dispute, that the rule of law has many dimensions, and they include identifying and implementing the constitutional rights of Aboriginal peoples. Aboriginal peoples have good reason to be frustrated with existing land and treaty rights implementation in Ontario. As the Ipperwash Inquiry concluded “The single biggest source of frustration, distrust, and ill-feeling among Aboriginal people in Ontario is our failure to deal in a just and expeditious way with breaches of treaty and other legal obligations to First Nations.”

The lack of dispute resolution mechanisms in the land claims process, the limits to its scope and the fact that the defendant (and not a neutral party) is the final arbiter of whether a claim will be settled, have resulted in a land claims process that is neither timely nor fair. That is why the Inquiry recommended the creation of a permanent independent statutory body to help address treaty and land claims in Ontario. It is also the reason that this summer the federal government announced that it intends to establish a statutory tribunal to address land claims in which it is a defendant.

Improving the processes for addressing land and treaty claims would be a major step toward reconciling the Constitutional rights of Aboriginal peoples with the rights of other Canadians. Another key element of that reconciliation would involve correcting the lack of public awareness about the treaty relationships that allowed this country to be established. In the 17th century the English writer Francis Bacon noted the impedi-

ments created by “Idols of the Cave”: the prejudices and misperceptions that individuals acquire unconsciously in any society. A surprising number of Canadians have acquired misconceptions about the nature and basis of Aboriginal rights. The prevalence of these beliefs is something regularly confronted in public consultations about land and treaty claims. Many Ontarians mistakenly believe that Aboriginal peoples were conquered or that their rights were once broadly extinguished by Canadian laws. Both of these are untrue. Since 1763, treaty-making has, by law, been the prerequisite to European settlement on Aboriginal lands. The covenants contained in those historic agreements mean that today all Ontarians are in a real sense the holders of treaty rights.

Many Canadians believe that if Aboriginal peoples have had valid claims they should have settled them long ago. This is an understandable view: it is generally unfair to raise claims that one might equally have pressed long ago. But most Canadians are unaware of the extent to which Canadian law has made First Nations subject to federal control since the dawn of European settlement in this province. Financial records, title documents, the processing of First Nation land transactions, the spending of First Nation moneys – all are subject to control by federal bureaucrats. Neither Canada nor Ontario took steps to develop policies for addressing aboriginal claims until the 1980s. And even then, the programs’ limited budgets meant that only a handful of claims could be resolved each year. Historically, First Nations also faced formidable legal obstacles to advancing their claims: as late as 1950 it was a summary conviction offence for a lawyer to take money from a First Nation in connection with an Aboriginal claim without federal consent. The courts have recognized these historical barriers to the prosecution of Aboriginal rights claims, but many Canadians remain unaware of the reasons that most disputes about Aboriginal rights were not resolved long ago.

Public awareness of the issues is essential to the progress of justice. The words of the Greek historian Thucydides remain true today: “Justice will not come to Athens until those who are not wronged become as indignant as those who are.” ☞



Prime Minister Stephen Harper with Aaron Lee-Wudrick

Students of politics

Western Law students forge diverse political connections

BACKROOM POLITICO - Aaron Lee-Wudrick

As a summer intern in Ottawa last year, Aaron Lee-Wudrick met Prime Minister Stephen Harper on a number of occasions, including at a barbeque at 24 Sussex Drive where he played soccer with the Prime Minister's kids. An admirer of Harper, Lee-Wudrick is particularly impressed by his memory for names. "I can't imagine how many people he has met in his life but every time I meet him he remembers my name and that I go to school at Western."

Lee-Wudrick feels it might be explained by the Western connection: Harper's assistant is a Western grad and his Chief of Staff is a former Western Professor. "There's a lot of Western influence hovering around the Prime Minister," he says with a smile. "It may predispose him."

Lee-Wudrick first became interested in political issues during a teachers' strike in high school. After exploring the issues, he found that he disagreed with the teachers, and formed a counter-protest. When he got to the University of Waterloo he immersed himself in political philosophy and got involved in party politics, becoming president of the campus Progressive Conservatives.

In the 2004 federal election he was asked to manage the

campaign of a Conservative candidate in Kitchener. Although he was flattered, he was worried that some of the older volunteers would resent the presence of someone so young. "I think by the end of the campaign I had won them over." He learned a lot in the process, and ran what he felt was a better campaign in the 2006 federal election.

Last summer he was one of some 60 young Conservatives accepted as summer interns in Ottawa. "Having done the work at the riding level, it was really interesting to hear what they were saying at the top," he says.

Now articling in Kitchener, Lee-Wudrick speaks warmly of the "community atmosphere" and emphasis on school spirit that first attracted him to Western Law. He served as President of the Legal Society in his final year. The Faculty's diverse academic offerings also worked to his advantage. He came to law school expecting to specialize in business law, but ended up with a strong interest in labour and employment law.

Is there a political career in Lee-Wudrick's future? "Maybe, but it is not going to be next year," he says. "I think it is important that you understand what a working person goes through before you can start making laws for them."

JUGGLING ACT – Richard Diamond

Last November, Richard Diamond delivered a stump speech in front of 6,000 delegates at the leadership convention in Montreal. Sharing the stage with three former Prime Ministers and numerous other luminaries, the second-year Western Law student introduced Scott Brison. “It was very cool, and kind of humbling,” says Diamond. “It was definitely the largest crowd I have ever spoken in front of.”

Diamond’s political odyssey began when his Grade 6 teacher asked all her students to volunteer in the 1993 federal election. He worked on the campaign of his local MP in Winnipeg, Rey Pagtakhan, who was so impressed that he offered him a summer job when he was a little older.

Diamond discovered a passion for politics, and began to get more involved in the youth wing of the Liberal party. In 2005 he was elected President of the Young Liberals of Canada (YLC). Under Diamond’s leadership, the YLC championed same-sex marriage, the Kyoto Protocol, and non-involvement in the American missile defence program. “Our role is two-fold,” he says. “It is to promote the Liberal Party to young voters as well as promote the interests and concerns of young Canadians to the Liberal Party. We do that by putting forward progressive policy that young people care about.”



Richard Diamond speaks at a Young Liberal rally for equal marriage

Diamond recently completed his two-year term as President, and assumed the role of Chair of the Liberal Party’s national communications committee. One of his big challenges is to get young people more politically engaged. “We need to convince young voters that their votes do matter,” he says. He hopes to pioneer new strategies to deliver his party’s message. “One of the things we need to recognize is that young people get their news from other sources than the traditional media. We need to be much more visible in the Internet, on the blogosphere, and on websites like Facebook.”

Diamond admits that things were a bit hectic last year, but found the “collegial atmosphere” of Western Law well suited to his ambitious extra-curricular agenda. “There are many people at Western Law who do a lot of things other than law school,” he says. “The atmosphere here really fosters that kind of community involvement.”

This summer Diamond is taking a break from party politics to volunteer at an AIDS orphanage in Kenya. He also plans to spend a little time on a safari to Mount Kilimanjaro. “This is the first time I’ve done something like this,” he says. “I’m really excited.”



Adam Chambers enjoys the unique atmosphere of the nation’s capital

A GOOD FIT – Adam Chambers

Adam Chambers’ motto could be ‘Think Big’. This year he’s helping Finance Minister Jim Flaherty oversee a budget of \$222 billion. “It’s a lot of money,” says Chambers, “but when you start parceling it all out you sometimes don’t have enough. You always wish you had more, but it all comes down to allocation.”

Chambers is taking a year away from his studies at Western Law as Executive Assistant to Flaherty in Ottawa. It’s a job that never has a dull moment, he says. “When the Minister goes places I am usually there to provide support as he needs it. I generally have to know a little bit about everything.”

Chambers began his career in party politics during his first year at Western. He joined the campus conservative club, attended a provincial party convention, and was eventually elected vice president of the Ontario Provincial Conservative Youth Association.

It was a Western professor and pediatric surgeon, Dr. Kellie Leitch, who introduced him to the Minister of Finance. Chambers worked in Flaherty’s Toronto office for a summer and then was invited to take a year off and come to Ottawa. “I feel it’s a good fit for me,” says Chambers, who has finished his second year of a concurrent HBA/LLB program and is focusing on finance.

There was no trouble getting the time off from Western Law. “There are lots of politically involved people in the School from all parties. The law school just kind of breeds that involvement in the political process.”

Chambers has quickly learned to love the unique environment of the capital city. “Parliament Hill is like a different world,” he says. “University is sometimes referred to as the ‘Western bubble.’ I guess the same could be said for the ‘Parliament Hill bubble.’”

Chambers is hoping that his experience will give him a greater understanding of government and how to better use taxpayers’ dollars. He also hopes that it will strengthen his knowledge of finance and tax, areas he may eventually specialize in.

He looks forward to resuming his studies in a year... or sooner. He says with a laugh, “Being an elected politician, or working for one, is not really a very secure profession.”



A love of law

After 33 years, beloved Western Law Professor Winifred Holland is retiring

Professor Winnie Holland's early years read like a novel. Born in Scotland during World War II, she lived the first five years of her life with her mother and grandmother in a one-room tenement apartment with no bathroom or hot water. Later she lived with her mother and father in Egypt and Malaya, where she was constantly on the move. Her father served in the British army, and spent part of his time as a motorcycle stunt driver who jumped through hoops of flame. She was shunted from school to school, hating education and feeling alienated from the other students. Then she then met a wonderful teacher who took a special interest in her and fostered a passion for reading.



At the age of 12, she decided to become a lawyer after watching a television program called “The Verdict is Yours”, a re-enactment of famous legal cases. From then on she read everything she could find about the law and lawyers. Her father, though, had other ideas. He felt that marriage, not education, was the career for women.

Forced to leave school at the age of 15, she worked for a time as a secretary in a law firm, and then discovered she could get an external law degree from the University of London. For three years in a row she finished at the top of all external students in Britain. During the third year of her degree program, she was invited to become a faculty member at University College London, despite the fact that she was only 21 years of age and had never actually attended a university.

The rest, as they say, is history. She and her husband Denys, also a UCL law professor, emigrated to Canada with their two children in 1974 at the urging of good friend Earl Palmer, then Western Law’s Acting Dean. Since then Holland has become a popular teacher, and a distinguished and prolific scholar. After 33 years in the Faculty, she retired this year.

Holland has published widely in the areas of family and criminal law. She became interested in the law of cohabitation as a young professor in England, at a time when she was a cohabitant herself. But when she looked it up in a family law text book, she found very little. “The entry under cohabitation simply said ‘See marriage,’” she says. “And any other references I found were pretty pejorative.”

Later on at Western Law Holland sensed a growing feeling that cohabitation should come with some rights and obligations, and began to research the area. The result was the first legal text in its field, *Unmarried Couples: Legal Aspects of Cohabitation*, published in 1982. She later co-authored *Cohabitation: The Law in Canada*, a loose-leaf service published by Carswell. Her writings have been cited in numerous judgments, and her expertise frequently sought, most recently with the advent of same-sex marriage. Holland also co-authored the first practitioner’s work on matrimonial property, *Matrimonial Property Law in Canada*.

She is also very proud of *The Law of Theft and Related Offences*, the first Canadian text in this area, published by Carswell in 1998. From her earliest days of teaching, Holland found property offences fascinating, and was surprised by the lack of coverage in courses in Canada. “Property crimes are interesting because they involve so many areas: contracts and property law, as well as criminal,” she says.

Holland has written widely on many aspects of criminal law, which she admits is her first love. She has a continuing interest in the defense of automatism. She’s also done scholarship on HIV/AIDS, following the case of Charles Ssenyonga, the first person to be charged with aggravated assault and criminal negligence causing bodily harm by failing to disclose his HIV status to sexual partners. Ssenyonga died before

judgment. “At the time there was a great deal of uncertainty about what to do with this situation,” she says. “It felt like existing offences were being shoehorned into something they weren’t designed for.”

Holland has also served as consultant to a number of law reform commissions, the most recent being the Law Commission of England and Wales on Murder and Related Offences in Canada. She believes that law commissions have an important role in creating coherence and coming up with suggestions for change. “Sometimes it’s okay to develop the law on a case by case basis, but there are times when you need to see the big picture.” She was a consultant to the Law Reform Commission of Canada on Revision of the Criminal Code, but to her dismay it was disbanded in the early 90s before any changes were made. “Parts of the Criminal Code are in such a mess – it’s like an old barnacle-encrusted ship,” she says.

It’s often tempting to pigeon-hole legal thinkers as being right- or left-leaning, but Holland resists stereotypes. A strong supporter of same-sex marriage, she’s also quite liberal in terms of family issues and rights of cohabitation. On the other hand, she describes herself as a “law and order type” in her approach to criminal law. “I believe that there has been too much emphasis on exclusion of evidence obtained in breach of one or other Charter right – and I’d like to see the balance tilting the other way.”

Western Law is a great place to teach, says Holland, because of the quality of its students, and the freedom it allows professors to experiment with different teaching styles and courses. Holland enjoyed all aspects of her teaching, particularly her small groups in first year and advanced classes in criminal law, where she helped students with their research projects. “I love to teach students who are genuinely interested in the law,” she says.

Although she is retiring from active teaching, Holland plans to sit on some government boards and continue with her research. She is also looking forward to spending more time with her second husband, former Western Law professor Gregory Brandt. Together they enjoy a number of interests, including travel, opera, golf, and reading.

Holland has two children from her first marriage, Nicholas and Jennifer, who are both lawyers. Nick is a partner with WeirFoulds LLP in Toronto, and Jen, a graduate of Western Law, is currently working part-time at home while she looks after her two small children. Holland laughs when she thinks about how the most important people in her life are lawyers. “It’s a virus – nothing but lawyers.”

Holland fell in love with Western the instant she saw it, and that feeling never changed throughout her 33-year career. “I’m very grateful to Western Law for giving me the chance to meet so many wonderful people,” she says. “Particularly in recent years it has been a very supportive environment, and has given me many opportunities.” ☞



On the move

After 35 years in the classroom, Professor Peter Barton plans to spend more time in the great outdoors

“Western Law has become an outstanding place with some very good people, and it’s getting better all the time.”

That’s Professor Peter Barton talking about the last 35 years in the Faculty of Law. After a long and distinguished career, he has recently retired and been named a Professor Emeritus.

Barton graduated as the gold medalist from Queen’s University Law School in 1967, where he also excelled as a ski jumper and cross-country skier. After a year at Harvard, he accepted a position as Assistant Professor at the University of British Columbia. Although B.C. is great for skiing, Barton took up cycling in a serious way, winning a race that involved a climb up Mt. Seymour.

He decided to return to Ontario in 1972, and joined Western’s Faculty of Law. Over the years he taught a wide range of subjects, including civil procedure, criminal law, criminal procedure, and administrative law. During his early years at Western he also practiced criminal law, and handled cases before the Ontario Court of Appeal. He now has a labour mediation and arbitration practice.

Barton has always loved the classroom. “I enjoy the enthusiasm of the students,” he says, “particularly those in first year. They’re so bright and eager. I really enjoy watching them learn and helping them along the way.” He is a very strong supporter of the small group program, and an enthusiastic advocate for Western Law’s outstanding student exchange programs.

In his research, Barton has written three practitioner-oriented books, and more than 20 articles and book chapters.

“I like to pick an idea and run with it,” he says. “My approach is to explain complicated concepts in simple terms.” *Practice in Provincial Court* was co-authored with London criminal lawyer Norm Peel, and *Mediation and Negotiation* co-authored with Western Law’s gold medalist of 1984 Mike Silver. *Civil Procedure Canada* was published for an international audience in 2002 by Belgian firm Kluwer International.

Barton has also made an important contribution to scholarship through the *Canadian Journal of Law and Jurisprudence*, which he headed up with Professor Richard Bronaugh. The Journal is celebrating its 20th anniversary this year (see story on page 40). “It has become a very high quality publication, and Western should be very proud of it,” he says.

Although Barton admits that the prospect of leaving Western “terrifies” him, he plans to keep very busy. “My mind is constantly moving,” he says. “As soon as I get tired of something I move on to something else.”

He intends to spend much of his retirement in the outdoors, kayaking, canoeing, skiing, sailing, and playing golf. He is looking forward to spending more time with his three daughters and grandchildren, and enjoying the pristine surroundings of his two-acre island in Georgian Bay. He also plans to continue his labour mediation and arbitration work.

While reflecting on the ties he’s built with students and colleagues over the years, Barton feels it’s also important to recognize the happy relationships he’s had with administrative and library staff. “They’re loyal, hard-working, and really helpful,” he says. “Without them this place wouldn’t be as good as it is.” ☞



A familiar face

After four decades, librarian Marianne Welch is stepping down

When Marianne Welch says that law students are the nicest students on campus, she's talking from experience. For 40 years, she's been helping law students navigate the Western Law Library.

Welch spent her early years at Western Law in a series of support staff positions. While working full time, she completed her Master of Library Science degree in 1974. Two years later, she became Western Law's Reference/Collection Librarian, a position that she has held ever since.

During her time at Western, libraries everywhere have been transformed by technology. "When I began, a mimeographed copy of a Supreme Court of Canada decision arrived by mail about 10 days after it was made," she says. "Now we can get a decision of the High Court of Australia the same day it is handed down."

In the past, all the holdings in the law library were recorded on catalogue cards. If Welch wanted to know what was held in the Main Library she would have to trek across campus. Today she can find out what is being held in almost every major library in the world – without leaving her desk.

Although there are enormous advantages to today's automated, virtual world, there are some downsides, says Welch. One

concern is permanent preservation. If a publication ceases to be available online, or becomes too expensive to purchase, there is no historical record. "In the past, if you wanted to know what a statute said in 1889 it was readily available in print form. We are not sure what will happen with the electronic information."

Welch has many interests, but two that she intends to enjoy more during her retirement are good food and studying the stock market. "I would love to form a lunch club with friends to go out to a new restaurant each week," she says. Another project is to spend more time on investments she holds in a "play account" with a discount broker. "My serious money will stay with professionals but in the play account, I can wheel and deal and think I am really clever without risking ending up on the street."

Although Welch feels that it's time to retire and make room for a younger generation, she says there is much she will miss about Western. "I have been fortunate to have had very good colleagues, and I've really enjoyed the contact with the students and the outstanding faculty we have here," she says. "I feel privileged to have been part of the academic community." 



Professor Richard Bronaugh

The Nature of Law

The Canadian Journal of Law and Jurisprudence marks its 20th anniversary

There are more than 1300 English language law journals in the world, but Western Law's Canadian Journal of Law and Jurisprudence (CJLJ) is one of the top publications that focuses on legal philosophy.

The idea arose in 1987, when law professor Errol Mendes suggested that the student-run Western Ontario Law Review be reborn as a journal of jurisprudence. Dean Wes Raynor liked the idea, and chose Richard Bronaugh, a legal philosopher in Western's Department of Philosophy, to be its editor. At the time Bronaugh had close ties to the Faculty of Law, and has since joined it. Peter Barton teamed up with Bronaugh two years later, and together they co-edited the Journal until Barton's retirement this year (see story on page 38).

Jurisprudence has two meanings for lawyers, says Bronaugh. "One is the developmental history of legal doctrines, and the other is high-level abstractions about the nature, policies, and principles of law." The Journal has a broad editorial mandate that encompasses all aspects of legal philosophy or jurisprudence.

CJLJ is published twice a year; recent issues are approximately 250 pages in length. It now receives as many as 150 submissions a year, and 18 to 20 are accepted for publication. Frequent submissions are from Canada, U.S., U.K., Oceania, and Israel, but CJLJ has received papers from as far away as India, Nigeria, Argentina, Norway, Hong Kong, Sweden, Spain, and Estonia.

Over the years, CJLJ has published 16 issues on special topics. These issues were guest edited by top academics, who invited submissions from respected scholars. The first special issue was *Legal Theory and Wittgensteinian Thought* in 1990, and the most recent was *Global Ethics* in 2006.

Now celebrating its 20th anniversary, the Canadian Journal of Law and Jurisprudence has developed an international reputation as a leading academic journal. Bronaugh is proud that many excellent scholars are keen to be published in CJLJ, and the number of submissions continues to climb. He particularly enjoys his interaction with authors, and is known as a hands-on editor. "I work very hard on readability, clarity, and economy," he says. "It's something I love to do." 

“I work very hard on readability, clarity and economy. It’s something I love to do.”

Richard Bronaugh

Scholars reflect on the Canadian Journal of Law and Jurisprudence

“I have published about half a dozen articles in the CJLJ during the past 18 years, and I’ve always found the editing of Richard Bronaugh salutary. Both philosophically and stylistically, he is very sharp. From the outset, the CJLJ has published important articles, and it has now become one of the four journals to which I regularly turn for state-of-the-art legal philosophy. Within the world of jurisprudence broadly defined, the Journal has raised the profile of the University of Western Ontario inestimably.”

Matthew H. Kramer

Professor of Legal & Political Philosophy,
Cambridge University Fellow and Director
of studies in Law, Faculty of Law,
University of Cambridge

“In its 20 years of existence the Canadian Journal of Law and Jurisprudence has established itself as one of the leading journals in its field, counting among the authors who published in it many of the leading names in legal theory today. Besides contributions on questions of “classical” jurisprudence like the relationship between law and morality and on issues in contemporary politics like multiculturalism, it also published articles in the theory of tort, contract, criminal law and punishment, even evidence, which show how philosophy can be relevant to legal practice. No doubt this success has to do with Richard Bronaugh’s skill in managing the Journal and his commitment to its academic excellence.”

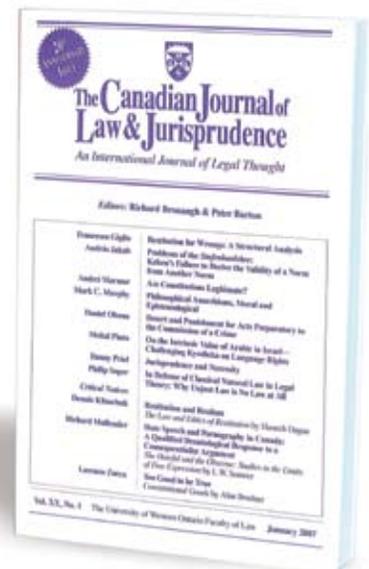
Daniel Priel

Oscar M. Ruebhausen Fellow in Law,
Yale Law School

“I have known Dick Bronaugh for over twenty years. Throughout that time, I have admired the continued contribution he makes to legal theory through the Canadian Journal of Law and Jurisprudence. The stature of the Journal has always been high, owing to the quality of the work seen in its pages. We are all in Dick’s debt.”

Dennis Patterson

Distinguished Professor of Law and Philosophy
Co-Director, Institute for Law and Philosophy
Rutgers University School of Law



supporting excellence



Why I support Western Law



Kevin Flynn (right) with scholarship recipient Richard Cheung

Ailbe C. Flynn LLB '97 Memorial Scholarship

Ailbe Flynn '97 was a successful lawyer with SONY BMG Music (Canada) Inc., a talented musician, a loving son and brother and newlywed husband of Lori Holsmer, when he passed away in May 2005 at the age of 34 after a courageous and hard-fought battle with cancer.

The family and friends of Ailbe wanted to find a meaningful way to honour a man who had so much left to offer, yet died so young. They decided to make a generous gift of \$25,000 to establish the Ailbe C. Flynn LLB '97 Memorial Scholarship in Intellectual Property, Information and Technology law. The scholarship, valued at \$1,125, is awarded annually to a full-time student in this area who has completed his or her final year with the highest standing.

Ailbe specialized in Intellectual Property law as an articling student at Deeth Williams Wall LLP, a role in which he excelled and thoroughly enjoyed. So much so, he was hired on by the firm full time where he quickly established himself as a promising specialist in the IP field. He eventually joined SONY BMG as Manager of Legal and Business Affairs and was later promoted to Director of Legal and Business Affairs. It was Ailbe's dream job, one that allowed him to pursue his twin passions of law and music.

"Ailbe loved the law, and was pursuing a Masters of Law degree, part-time, on top of an already demanding full-time job," says his brother Kevin. "We felt an academic performance-based scholarship was a fitting tribute to him. Ailbe pursued education the same way he pursued life, with a lot of determination and heart. Knowing his name now lives on at Western, where he really came into his own, would please him immeasurably."

Jay Carfagnini '80 and Karen Trimble '80

"Rich McLaren has been an incredible mentor to us over the years. We both feel such a sense of gratitude and respect for him that we wanted to demonstrate it in a meaningful way."

Jay Carfagnini '80 is talking about the Richard H. McLaren Professorship in Business Law. Jay and his wife Karen Trimble '80 have made a generous commitment of \$50,000 towards the Professorship.

The Professorship was established to honour McLaren's accomplishments and enhance Western's contribution to business law. The goal is to raise \$1.25 million, which will enable the School to recruit a scholar of international standing in the field.

Jay and Karen met as first-year students in McLaren's small group class and Jay worked for him while a student. "Karen and I married in third-year law school - not a common thing to do - and Rich was always incredibly supportive," says Jay.

When they learned about the establishment of the Professorship, Jay and Karen agreed it was something they wanted to embrace. "Rich has been a very strong influence on us both personally and professionally," says Jay. "His genuine interest in people and his enthusiasm for everything he touches is contagious. Karen and I are happy to do a small part in helping to support the Professorship in Rich's honour."



Karen Trimble and Jay Carfagnini

supporting excellence

Warren Bongard '91

Warren Bongard never dreamed he would become a lawyer. It was his mother, Helen, who encouraged him to apply to law school. "I didn't do well on my first LSAT, but my mother encouraged me to write it again and I did much better. My family was so proud when I was accepted into Western Law."

After almost four years practising business law on Bay Street, Warren stumbled across his true passion and future career while being interviewed by a headhunter. "Instead of getting a job with another firm, I was offered an opportunity to work for the headhunting company," Bongard recalls. The job combined his passion for communicating with his strong business and sales skills. He eventually co-founded ZSA, which has grown to become the leading legal recruitment firm in Canada.

ZSA also recruits Canadian lawyers to work in law firms from around the world. "There's a great opportunity for mobility and young lawyers are looking for positions in places such as the U.S, U.K., Asia, France, Australia, Dubai and Tokyo. It's been a terrific growth area for our company over the last year."

When Warren's mother Helen passed away in 2004 he wanted to honour her and the role she played in encouraging him in his education and career. Warren has made a gift of \$8,110 over five



Warren Bongard

years to name the Helen and Warren Bongard Award. An award of \$1,500 will be established each year for the next five years to support a full-time mature undergraduate student in Year Two or Year Three in the Faculty of Law based on academic performance and financial need.

"I think it's a fitting way to honour her memory," says Warren. "She was passionate about education, so I know she would be pleased."

Why I support Western Law

Stephen Dattels '72

Mining is one of Canada's vital industries, but there are very few Canadian lawyers who come out of law school knowing anything about it. With the help of Western Law, Stephen Dattels '72 is trying to change that.

The Stephen Dattels Fellowship in Mining and Finance supports a visiting professor or lawyer to teach a course in this area during the January Term. "There is a huge need for lawyers with good knowledge in mining and finance," says Dattels. "I feel that this is an important part of Canadian legal practice, but there has been no educational outlet for students for this kind of training."

The January Term allows students to focus on one course for four weeks. It's designed to provide a practical and active learning experience. The goal is to prepare students for the practice of law in the global marketplace. "I hope this course option will open some students' eyes to the fact that a lot of mining activity takes place outside Canada in international financial markets," says Dattels. In 2008, the Stephen Dattels Fellow will be Professor Barry Barton, University of Waikato Law School, New Zealand.

After graduating from Western Law, Dattels practiced law for two years and then joined a venture capital company. He became Executive Vice President of Corporate Finance at Barrick Gold

Corporation in the early-80s during its formative years when Barrick grew from a capital base of only \$10 million to \$2 billion when he left in 1987. Today, Barrick is the largest gold mining company in the world. Since 1987 he has founded or arranged for the financing of numerous mining ventures. In 2005 he founded UraMin Inc., a developer of uranium properties in Africa, which was recently sold to the French uranium giant Areva for \$2.5 billion. Through his family-owned merchant bank, Regent Mercantile Bancorp Inc., Dattels continues to finance other mining companies, including a new venture focusing on China's coal industry.

Dattels, who lives in London, England, is grateful for the first-class legal training he received at Western Law and hopes to provide current students with an opportunity he never had – to learn about mining law and finance while still at law school. "Mining has been good to me and I'd like to expose students at Western to the tremendous opportunities that exist in this business. We are in a commodity supercycle and there is a crying need for talented mining lawyers with experience not only about international mining laws and contracts pertaining to mining assets, but also international mining finance. While Canada has been a leader in mining finance, capital markets in England, Hong Kong, China, Australia and the United States are providing significant amounts of capital for the mining industry particularly for emerging market assets." 

Western Law Donors We would like to recognize the following donors who have given or pledged \$1,000 or more to Western's Faculty of Law between May 1, 2006 and April 30, 2007. We also wish to thank those donors who have chosen to remain anonymous.

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matoula.zesi@uwo.ca

new faculty books



Mergers, Acquisitions, and Other Changes of Corporate Control

by Christopher C. Nicholls

Irwin Law

Published: April 2007

\$70.00/ 312 pages

ISBN-13: 978-1-55221-137-3

From the publisher:

This book offers a succinct and insightful discussion of the laws governing mergers and acquisitions transactions conducted in Canada. It draws on a collection of loosely related legal principles and rules in corporate law and securities law as well as in tax, competition, and a handful of other areas. Professor Nicholls, one of Canada's leading scholars in corporate law, provides a clear guide to this complex pastiche of legislation, regulation, administrative and judicial decision-making, and standard practices which have developed over time from both domestic and international precedents.

Mergers, Acquisitions, and Other Changes of Corporate Control is the latest title in Irwin Law's Essentials of Canadian Law series. It will be the first reference for legal practitioners, corporate executives, students, or anyone else who requires an up-to-date, authoritative analysis of the Canadian legal environment in which changes in corporate control take place.



Emerging Issues in Tort Law

Edited by Jason Neyers,
Erika Chamberlain and Stephen Pitel

Hart Publishing

PUBLISHED May 2007

£75.00/610 pages

ISBN:1-84113-707-3 /9781841137070

From the Publisher:

In this book, articles by leading tort scholars from Australia, Canada, Hong Kong, Israel, New Zealand, the United Kingdom and the United States deal with important theoretical and practical issues that are emerging in the law of torts. The articles analyse recent leading developments in areas such as economic negligence, causation, vicarious liability, non-delegable duty, breach of statutory duty, intentional torts, damages, and tort law in the family. They provide a foretaste of the issues that will face tort law in the near future and offer critical viewpoints that should not go unheeded. With its rich breadth of contributors and topics, *Emerging Issues in Tort Law* will be highly useful to lawyers, judges and academics across the common law world.



International Law: Doctrine, Practice, and Theory

by John H. Currie, Craig Forcese,
Valerie Oosterveld

Irwin Law

Published: July 2007

\$92.00

ISBN-13: 978-1-55221-134-2

From the Publisher:

International Law: Doctrine, Practice, and Theory is an innovative and unique volume which crosses the traditional boundaries between textbook, casebook, and scholarly monograph. The book is designed primarily to introduce students and practitioners of law, political science, and international affairs to the system and substance of international law. It is also a convenient and comprehensive reference work on the most important aspects of this burgeoning field. Remarkable for both its depth and breadth, *International Law: Doctrine, Practice, and Theory* sets a new standard for the study of international law in Canada. It will make an invaluable addition to the reference collection of practitioners, judges, and scholars working in this ever-increasingly important area of modern law.



Government Venture Capital Incentives A Multi-Jurisdiction Comparative Analysis

By Stephen Barkoczy and Daniel Sandler

Australian Tax Research Foundation

\$49.50

From the Publisher:

This book is a unique international comparative study of venture capital tax expenditure programs and related government spending and investment programs designed to support the growth of small and medium-sized enterprises ("SMEs"). They study contrasts the programs that operate in Australia with programs operating in the United States, Canada, the United Kingdom, Singapore, Malaysia and New Zealand.

faculty briefs

Craig Brown

Professor Craig Brown served as Acting Dean in 2006-2007. He presented a paper entitled "Interpreting Insurance Policies: Courts' Trying to Find a Balance" at a conference at Osgoode Hall. His 6th edition of *Insurance Law in Canada* is due out in August 2007. Prof. Brown is currently on leave working on a new book about the law and golf and an article about the implications of climate change for insurance law.

Chi Carmody

Chi Carmody continues to teach and publish in the field of international law and international trade law. In November he chaired a panel on international legal theory for the International Economic Law Interest Group of the American Society of International Law at Bretton Woods, New Hampshire. In February, he coached Western Law's Jessup Moot Team, which placed third nationally. Prof. Carmody spoke on a regional trade transparency mechanism in Seoul, Korea and on international trade and cultural disciplines in Taipei, Taiwan in June. In fall 2007, he will be leading a research project involving Western Law students which seeks to draft a Cross-Straits Economic Framework for application between China and Taiwan.

Mysty Clapton

Over the past year Professor Clapton has published "Contractual Damages for Mental Distress" in the *Law Quarterly Review* (with Professor Mitchell McInnes) and "Competing Interests on the Failure of a Credit Union" in the *Banking & Finance Law Review*. She was also awarded an internal grant from the Social Sciences and Humanities Research Council for her research on law reform and the Family Law Reform Act. She continues her research in private law remedies.

Michael Coyle

Professor Coyle continued to work in the area of Aboriginal rights and law reform. In October, he was invited to appear before the Standing Senate Committee on Aboriginal Affairs. His submission focused on structural impediments to resolving Aboriginal rights disputes under the current federal land claims process. The Committee's final report cited Professor Coyle's submission more than a dozen times in support of its analysis. Professor Coyle's research was also heavily cited in the final report of the Ipperwash Inquiry published in May 2007.

In November Professor Coyle was invited to speak at the Fifth Annual Insight Conference on Aboriginal Law, where he presented a paper entitled "Dispute Resolution Theory and Aboriginal Land Claims." In January he chaired a SSHRC workshop on negotiation and Aboriginal governance. Professor Coyle pursued his SSHRC-funded research on negotiation theory and the consensual development of institutions Aboriginal governance. He contributed a chapter on power dynamics and negotiation for *The Theory and Practice of Representative Negotiation*, published in August 2007. He also completed two articles on separate aspects of Aboriginal treaty law.

Tim Edgar

In November 2006, Professor Edgar (Associate Dean, Administration) presented a paper on the VAT treatment of financial services at a conference in Wellington commemorating the twentieth anniversary of the introduction of the GST in New Zealand. The conference papers have since been published by Thomson Publishing. He also published two papers on income trusts. The first appeared in *Tax Notes International*. The second appeared in the *Canadian Tax Journal* and was co-authored with Reuven Avi-Yonah

of the University of Michigan and his doctoral student, Fadi Shaheen. Professor Edgar continues to research in the area of the tax treatment of financial instruments and financial innovation. More particularly, he is undertaking an empirical, cross-country study of the influence of taxation on financial innovation along the debt-equity boundary. In addition, he continues to pursue an empirical study of patterns of decision making in tax avoidance cases with Professor Sandler and Thaddeus Hwong of Atkinson College, York University. He recently presented a working paper describing the modeling for this study to the Australian and New Zealand branches of the International Fiscal Association, as well as the Policy Advice Division of New Zealand Inland Revenue.

Randal Graham

Professor Graham published two pieces in the 2006-2007 academic year: his article entitled "Right Theory: Wrong Reasons" appeared in the *Supreme Court Law Review*, and his article "Politics and Prices: Judicial Utility Maximization and Constitutional Construction" was published in the *Indian Journal of Constitutional Law*. The latter piece related to a talk delivered by Professor Graham during a brief exchange visit to the National Academy of Legal Studies and Research (NALSAR) in Hyderabad, India, during the January term of 2007. While in India Professor Graham delivered lectures in legal ethics and statutory interpretation, his two primary fields of research. He also delivered a keynote address on statutory interpretation at a conference of lawyers working for the Ministry of the Attorney General, as well as a lecture on the economics of judicial reasoning at the annual meeting of the Canadian Law & Economics Association. Professor Graham is now on sabbatical, during which he plans to complete his fourth book on the economic incentives governing legal

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institutions and individuals operating within the judicial system.

Jasmine Girgis

Professor Jasmine Girgis was awarded the Lloyd Houlden Research Fellowship for 2007 from the Canadian Insolvency Foundation, in the amount of \$10,000. The Houlden Fellowship is awarded for a paper that addresses current issues in Canadian insolvency policy and practice. She published a paper entitled "Mortgage Fraud, the Land Titles Act and Due Diligence: The Rabi v. Rosu Decision" in the *Banking & Finance Law Review*, v.22 no.3.

Ian Holloway

From January to June, Dean Holloway served as a Visiting Professor of Law at the National University of Singapore. During his time there he completed an article on Lord Sinha (the first non-European to be appointed a Lord and a member of the Judicial Committee of the Privy Council), as well as a piece arguing that Singapore would be better-served by adopting the Canadian approach to judicial review rather than continuing to rely upon English precedent. He also made preliminary progress on a larger work on the history of the common law system in Canada. Dean Holloway conducted a two-day seminar for the Monetary Authority of Singapore (Singapore's central bank) on lawful decision-making and delivered a talk to the Canadian Chamber of Commerce in Singapore entitled "Educating the Global Mind". In fall 2006, he carried out a review of the Small Claims Court of Ontario at the request of the Attorney-General.

Ben Hovius

Professor Hovius's paper entitled "Legislative Approaches to Property Rights for Unmarried Couples" was published in August 2006 in McLeod and Mamo, ed., *Matrimonial Property Law in Canada* (Carswell, looseleaf). He awaits the appearance of a lengthy article called "Property

Rights for Common Law Partners" in the Jay McLeod Memorial Book that Carswell expects to publish this summer. This book will illustrate and celebrate Jay's influence on the development of Family Law in Canada. At the end of June 2007, Professor Hovius's role as an Associate Editor of the *Dominion Law Reports* and the *Canadian Criminal Cases*, published by Canada Law Book, came to an end. During his eight years as Associate Editor, he wrote more than 800 headnotes. The electronic era has reduced the demand for commercially produced law reports to such an extent that Canada Law Book is no longer using legal academics as associate editors. This move brings to an end a long connection between Western Law and the DLRs. Western faculty members have served as associate editors for at least the last 40 years.

Grant Huscroft

Professor Huscroft served as Associate Dean (Academic) during the past year. He spoke at "The Charter at 25", a conference in Montreal commemorating the twenty-fifth anniversary of the Canadian Charter of Rights and Freedoms, and his paper will be published in a book of that name later this year. He published "Constitutionalism from the Top Down", a critique of "dialogue theory" in the *Osgoode Hall Law Journal*, and "The Citation of Overseas Authority in Rights Litigation in New Zealand" in the *Otago Law Review*, co-written with James Allan and Nessa Lynch. He is currently completing an edited book of essays on constitutional theory that will be published by Cambridge University Press in 2008.

Rande Kostal

In the course of the academic year, Professor Kostal continued the basic research on his book concerning the legal reconstruction of Germany and Japan under American occupation.

In this regard, he presented invited papers at Columbia, California-Berkeley, and Boston universities. Professor Kostal was also able to obtain a substantial grant from the Academic Development Fund of the The University of Western Ontario. The grant will sustain his work until its completion in 2009.

Michael Lynk

Professor Michael Lynk spent the 2006-07 academic year on sabbatical. In June 2006, he was one of the organizers of an international law conference at the University of Exeter, in England, examining a rights-based approach to a sustainable peace in the Middle East. The conference attracted legal scholars, lawyers, diplomats and human rights advocates from three continents. He presented a paper on the legal status of settlement colonies in international law. Professor Lynk is now co-editing the best of the papers into a book, which will be published in 2008.

Professor Lynk also organized (along with Koskie Minsky LLP and Heenan Blaikie LLP) the 4th annual Lecture and Conference on Labour Law at the Western Law. The theme of the event was international labour law, and the state of fundamental rights in the global workplace. Professor Lynk delivered a paper on the likely impact of the recent United Nations Convention on Disability on the workplace. He has been co-editing the papers into a book, also scheduled for publication in 2008.

In April 2007, he was invited to deliver a paper by the Law Society of Upper Canada at its annual Special Lecture series. He spoke on disability and work, and examined the emergence of the accommodation duty in labour law, human rights law and employment law. His paper will be published by Irwin Law in a collection of articles from the Special Lectures. He spoke on statutory stagnation in Canadian labour law at the 18th

World Congress on Labour Law and Social Security, in Paris and delivered a paper on international labour law standards in Canadian law at the International Jurisprudence and Domestic Law conference in Montreal. He also presented a paper on mental illness at work at the Disability and Work conference at the University of Calgary. While on sabbatical, Professor Lynk taught a course on international labour law at the law faculty at Victoria University in Wellington. In April 2007, Professor Lynk designed and taught an intensive course on Disability and Work for the Osgoode Professional LL.M. program in Toronto.

Richard McLaren

Professor McLaren published "Revised or New Test Procedures: What CAS Requires" in the *International Sports Law Journal* in October and "Human Rights: Women Ski-Jumpers Allege Human Rights Breach" in the *World Sports Law Report* in May. He was the invited speaker at a number of conferences this past academic year. In the fall he delivered "Enforcement of International Arbitration Awards" at the National Sports Law Institute at Wuhan University, Faculty of Law Wuhan, China. In December he presented "Tracing the Security Interest in Proceeds under the PPSA" to the Ontario Bar Association. He also delivered a paper entitled "Appeal Jurisprudence under article 13 of the World Anti Doping Code" at the Paper Court of Arbitration for Sport in Nairobi, Kenya in June. He also delivered the following public lectures; "Exceptional Circumstances in Doping Cases" at Kings' College, University of London, London, England in January. In April he delivered "Sports Arbitration in the Olympic Games" at the China University of Political Science, Law Faculty of International Law in Beijing and a lecture and paper on Corporate Finance in Canada at the Renmin University, Faculty of Law, Beijing. In June Prof. McLaren presented a Business

Law Seminar on the Ontario Personal Property Security Act Amendments to the Middlesex Bar Association.

Bradley Miller

Professor Miller presented a paper entitled 'Justifications for Rights Limitations' at a colloquium on Interpreting the Constitution at Western Law in October. In November he presented 'The Harm Principle and the Labaye decision' at a colloquium on Harm and Morality at the Centre for Cultural Renewal in Ottawa. In May he participated in an 'Author meets critics' roundtable on Waluchow, A Common Law Theory of Judicial Review, at the Canadian Philosophical Association annual meeting in Saskatoon.

His article 'Justifications for Rights Limitations' will be published in a forthcoming book to be published by Cambridge University Press, 2007. His review essay, "Waluchow, A Common Law Theory of Judicial Review," was published in the *American Journal of Jurisprudence* (2007).

Jason Neyers

Over the past year, Professor Jason W. Neyers has published work in the *Law Quarterly Review* and the *Advocates Quarterly* (on the topics of vicarious liability and the recent history of duty of care) and presented a paper on "The Principled Exception to Privity of Contract" to the Commercial and Consumer Law Workshop in Banff, Alberta. He also co-edited the book *Emerging Issues in Tort Law* which was published by Hart Ltd. of the United Kingdom in early 2007.

Professor Neyers also created and administers the Obligations Discussion Group (ODG), which is an international mailing list devoted to all aspects of the law of obligations. The ODG has over 150 members from seven different countries. An archive of the group's discussions can be found at www.ucc.ie/law/odg/home.htm. To be added to the list please send a message to obligations-request@uwo.ca.

Christopher Nicholls

Professor Christopher C. Nicholls joined the Western Law Faculty in July of 2006, and is currently the Director of the faculty's Business Law Area of Concentration. In October, his research study, "The Characteristics of Canada's Capital Markets and the Illustrative Case of Canada's Legislative and Regulatory Response to Sarbanes Oxley" was published as part of the Final Report of The Investment Dealers Association of Canada Task Force to Modernize Securities Legislation in Canada (chaired by Western Law alum Tom Allen). His paper, "Lock-ups, Squeeze-outs, and Canadian Takeover Bid Law: A Curious Interplay of Public and Private Interests" was published in Volume 51 of the *McGill Law Journal*, and his comment, "Beyond the Veil: Wildman v. Wildman" and a review of "The Law and Economics of Irrational Behavior" were published in Vol. 44 of the *Canadian Business Law Journal*. In May 2007, his fourth book, Mergers, Acquisitions and other Changes of Corporate Control was published by Irwin Law, and that same month he made a presentation on the duties of directors of companies facing takeover bids to the Canadian judges attending the National Judicial Institute's Civil Law Seminar in Vancouver. In July 2007, he completed a three-year stint as Associate Editor of the *Canadian Business Law Journal*, where he continues to be a Corporate Finance Specialist Editor. He is also a member of the Editorial Board of the *Canadian Journal of Law and Technology*. He was invited to Dalhousie Law School to give a guest lecture in April, and also attended conferences in Toronto, New York City, and at the Harvard Law School in Cambridge. He is currently at work on a book on the regulation of financial institutions to be published by LexisNexis.

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Valerie Oosterveld

During the 2006-2007 academic year, Professor Oosterveld earned her J.S.D. degree from Columbia Law School. She published *International Law: Doctrine, Practice and Theory* (Irwin Law, 2007) (with John Currie and Craig Forcese) and "Gender, Persecution and the International Criminal Court: Refugee Law's Relevance to the Crime Against Humanity of Gender-Based Persecution" (2006) 17(1) *Duke Journal of Comparative and International Law* 101-155.

In addition, she completed "Prosecution of Gender-based Genocide", in Samuel Totten (ed.), "The Plight and Fate of Women in Genocidal Situations, Volume 7 of Genocide: A Critical Bibliographic Review" (Transaction Publishers, forthcoming 2007) and "Women's Rights and International Criminal Law" in David Forsythe (ed.), *Encyclopedia of Human Rights* (Oxford University Press, forthcoming 2008).

Her presentations included "Gender and International Criminal Justice" in Vancouver, "The Transition from War to Peace: The Rome Statute of the International Criminal Court and Beyond" and "Negotiating Gender into the Rome Statute of the International Criminal Court" in Toronto, "Women, International Criminal Justice and Peacebuilding: Advances and Silences within International Tribunals" and "Implementing Protection of Civilians through International Criminal Justice Institutions" in Ottawa, "International Criminal Justice, Peace and Politics: Making Gender Matter at the Special Court for Sierra Leone" in London, and "Governance and International Criminal Justice" in Waterloo. She also chaired "The New United Nations Human Rights Council: An Evaluation" at the Canadian Council on International Law's October 2006 annual conference.

She co-organized an expert group meeting on "Planning for Residual

Issues for International and Hybrid Courts and Tribunals" at the United Nations in New York in February. In June she was the co-organiser of a conference entitled "Cross-purposes? International Law and Political Settlements" at Western.

Adam Parachin

Professor Parachin continues to research and write in the area of charitable trusts and the taxation of philanthropy. He delivered a paper dealing with the coherence of the legal construction of charity at the 2007 Southeastern Association of Law Schools Conference. He also delivered a paper at the 2007 National Charity Law Symposium on the privileged position enjoyed by charities in relation to restrictive rules of property law, specifically the rules against perpetuities and accumulations. In addition, he prepared a paper that critically reflects upon new income tax rules that regulate how charities expend donated property. He was also an editor of the 4th edition of *Charity Law*, which is a consolidation of charity statutes published by Butterworths. His works in progress include the development of a theory of charitable gifts under federal income tax law.

Mark Perry

In the past academic year Professor Perry published "FLOSS as Democratic Principle" in the *The International Journal of Technology, Knowledge and Society* (with Brian Fitzgerald, QUT), co-authored "Creating a legal framework for copyright management of open access within the Australian academic and research sector OAK Law Project Report No. 1" and contributed to the *Encyclopedia of Privacy* 2006, edited by William G. Staples. He also published and presented additional peer-reviewed papers; "Using Web Service Level Agreements (WSLA) to Differentiate Web Service Offerings" (with Halina Kaminski, Khalid

Shredil, Hanan Lutfiyya and Nazim Madhavji) to the I-Society in Miami, "Agent Design of SmArt License Management System Using Gaia Methodology" (with Qian Zhao and Yu Zhou) at The Third International Conference on Autonomic and Autonomous Systems, and "Software as Performance" (with Stephen Watt) and "Verifiable Electronic Voting: an Open Source Solution" (with Halina Kaminski) both at the LawTech Conference at MIT in Boston. "A pattern language for open-source software" (with Halina Kaminski) was presented at the SugarLoaf Pattern Language of Programming Conference in Brazil. He won the Prize Winning Poster Award (with P.Krishna and B. Fitzgerald) for "Material Transfer Agreements in Biotechnology" exhibit at ABIC2006 in Melbourne.

In addition, Prof. Perry was an invited speaker at several conferences, including a talk on Virtual Environments at the Unlocking Intellectual Property conference in Sydney in July 2006. He presented two exhibits at the CASCON conference in October. He was the conference organizer and Chair (with Brian Fitzgerald) and presented two papers at the Knowledge Policy for the 21st Century held at Western Law in May 2007. In June, he organised and presented a talk and poster at the Open Source Software Conference in Limerick and spoke on "Biotechnology and TRIPS" at the colloquium at the W.I.P.O and the W.T.O. in Geneva. In 2006-2007, Prof. Perry was the Tremayne-Lloyd Law Faculty Fellow and appointed to the Research Committee of the Ontario Law Commission. He was reappointed as a Member of College of Reviewers of Canada Research Chairs 2006 and IBM Centre for Advanced Studies Faculty Fellow.

Stephen G.A. Pitel

Professor Pitel co-authored "The Evolution of the Extra-territorial Mareva Injunction in Canada: Three

Issues”, which was published in the *Journal of Private International Law*, and “Rating the Provinces and Territories: The 2006 Report Card: A Comprehensive Review of Provincial and Territorial Impaired Driving Laws” (with Professor Solomon), which was released nationally by MADD Canada. He also co-authored *Cases and Materials on the Law of Torts*, 7th ed. (Carswell), co-edited *Emerging Issues in Tort Law* (Hart Publishing) and maintained a national e-mail news and discussion list for conflict of laws professors.

In 2006-2007, Dr. Pitel was invited to present his paper on “Enforcement of Foreign Non-Monetary Judgments in Canada (and Beyond?)” at the Journal of Private International Law Conference in Birmingham, England.

Melanie Randall

Prof. Randall published “Equality Rights and the Charter: Reconceptualizing State Accountability for Ending Domestic Violence” in 2006, in a book of essays on the Canadian Charter entitled *Making Equality Rights Real: Securing Substantive Equality under the Charter*, (F. Faraday, et al., eds.,) Toronto: Irwin, 2006. Her paper, “Sexual Assault in Spousal Relationships, ‘Continuous Consent,’ and the Law: Honest but Mistaken Judicial Beliefs” is forthcoming, as is a book review of *Rethinking Domestic Violence*. In October she delivered three invited presentations; “State Responsibility for Ending Violence against Women: International and National Considerations, at the Canadian Council on International Law, Annual Conference in Ottawa and “Vulnerable Witnesses and the Challenge of Credibility Assessments” at the Regional Judicial Seminar in Kingston, Ontario, and the Ontario Court of Justice, Regional Judicial Seminar, Sault. Ste. Marie.

She also presented “Domestic violence and the Challenge of Judicial Education” to the Faculty of Law, University of Westminster, London,

England in March and “Agency, Sexuality and Feminist Legal Theory” at the Why and How? Theoretical and Methodological Directions in Law, Feminism, Gender and Sexuality conference at the University of British Columbia in August, 2006. In March Professor Randall was a visiting Scholar, AHRC Research Centre for Law, Gender and Sexuality, Faculty of Law, University of Kent, Canterbury, United Kingdom, where she delivered a paper on “Feminism, Sexuality and Agency”. Professor Randall continues working with the National Judicial Institute to develop educational programs for judges, and is completing the forthcoming Criminal Law Bench Book on Domestic violence and the Law.

Daniel Sandler

Professor Sandler’s most recent book, coauthored with Professor Stephen Barkoczy of Monash University, Melbourne, *Government Venture Capital Incentives: A Multi-Jurisdiction Comparative Analysis*, was published by the Australian Tax Research Foundation in February 2007. Professor Sandler was in Australia for the launch of the book and spoke on “Global Developments in Venture Capital Schemes and Implications for Australian Investors” at a symposium on “Developments in Venture Capital Structures and Incentive Schemes” in Melbourne, Australia in February. The book was based on a report, written by Professor Sandler, Professor Barkoczy and others, prepared for Australia’s Department of Industry, Tourism and Resources that was published by Monash University in December 2006. He also chaired a panel on “The Importance of Venture Capital in Promoting Entrepreneurship” at the Canada-U.S. Law Institute annual conference in Cleveland, Ohio in April 2007.

Robert Solomon

Professor Solomon has continued his research and presentations in the

traffic safety, torts and healthcare fields. Professors Solomon and Pitel co-authored “Rating the Provinces and Territories, 2006,” which was published by MADD Canada and served as a basis for meetings with provincial and territorial Attorneys-General. Since the Report’s release, five provinces have introduced major progressive legislation consistent with the Report’s recommendations. Professors Solomon and Chamberlain published *Youth and Impaired Driving in Canada: Opportunities for Progress*. It provides the provinces and territories with a blueprint for minimizing impairment-related and other traffic crashes - the single largest cause of death among Canadian youth. Professors Solomon, Chamberlain and Usprich’s article, “BAC to the Future: Modernizing the Criminal Drinking-Driving Threshold”, appeared in (2006) 52 *Criminal Law Quarterly* 35. During the last year, Professor Solomon met with the former and current federal Minister of Justice and Attorney-General to discuss comprehensive amendments to the Criminal Code’s impaired driving provisions. He subsequently met with Prime Minister Harper to discuss these issues. Professor Solomon was an invited participant at the Attorney-General’s Expert Forum on Bill C-32 (An Act to Amend the Criminal Code (Impaired Driving)). In addition to testifying before the House of Commons Standing Justice Committee to discuss Bill C-32, Professor Solomon submitted a brief co-authored with second-year law students Mr. A. Carlson and Ms. M. Nikolic. Professor Solomon presented numerous papers at various conferences. These included presenting: Health Policy Rounds for the British Columbia Ministry of Health and the Centre for Addiction Research of British Columbia; Addictions Rounds for the Collaborative Program in Addiction Studies at the University of Toronto; and a plenary address at the 2007 AUTO 21 Scientific Confer-

faculty briefs

ence. In March, The International Council of Alcohol, Drugs and Traffic Safety (ICADTS) named Professor Solomon the recipient of the prestigious 2007 Widmark Award in recognition of his significant work in the field of impaired driving reform.

Tom Telfer

Professor Telfer is the co-author, with David Brown, of *Personal and Corporate Insolvency Legislation: Guide and Commentary to the 2006 Amendments* (Wellington: LexisNexis Butterworths New Zealand, 2007). This work provides an analysis of recent New Zealand insolvency law reforms. Professor Telfer's project, "From an Evil to a Commercial Necessity: Bankruptcy Law in Canada from 1867 to 1919", was selected to receive funding to hire a student for the 2007 Bordner Ladner Gervais Fellowship.

Professor Telfer, with Anthony Duggan of University of Toronto, presented "Canadian Preference Law Reform" at the 36th Annual Workshop on Commercial and Consumer Law, Banff, University of Alberta in October 2006. He also presented, with David Brown of Victoria University of Wellington, "Reforming Voidable Preference Law: Challenges and Change" at the 6th Annual Corporate Insolvency Law Conference, in Auckland, March 2007. This paper was later published as "The New 'Australasian' Voidable Preference Law: Plus Ça Change?" in the *New Business Law Quarterly*. In February 2007, Professor Telfer attended a joint meeting in Portland OR, of the Uniform Law Conference of Canada, the Mexican Center for Uniform Law, and the National Conference of Commissioners on Uniform State Law in relation to "Project to Create a Harmonized Legal Framework for Unincorporated Associations in North America". In January 2007 he was appointed as the Book Review Editor for the *Canadian Business Law Journal*.

Margaret Ann Wilkinson

Margaret Ann Wilkinson was the Distinguished Visitor at the Law and Technology Institute in the Faculty of Law (and Visiting Scholar at the School of Information Management) at Dalhousie University during her 2006-2007 sabbatical year. She published "The Public Interest in Moral Rights Protection," [spring 2006] in the *Michigan State Law Review*. In November she presented "Balancing Public and Private Claims to Data," at Dalhousie's School of Information Management and "Competition and Competencies: The Commodification of Health Care," to the Health Law Institute, Faculty of Law, Dalhousie University. She contributed an Expert Report entitled "The Concept of Fair Dealing," to the current proceedings before the Copyright Board of Canada in the case of Access Copyright Elementary and Secondary School Tariff 2005-2009. In April she gave a lecture entitled "Social Sciences and Humanities Research and the Protection of Privacy in Universities" at the inaugural Ethics at Ryerson Series at Ryerson University. Funded through one of her grants, Prof. Wilkinson and Prof. Mark Perry will be co-chairing a three-day "Canadian Intellectual Property Academy: Audience and Outreach" workshop in September 2007, at Western Law.



UWOLAA President Rick Morelli

Building UWOLAA & Supporting Western Law

My second term as your University of Western Ontario Law Alumni Association (UWOLAA) President has been an exciting and productive time. Over the past year we have built on our excellent foundation and have planned for some great events.

In January, alumni gathered at the John Labatt Centre to watch our Western men's hockey team and visit with each other. And in March, Ontario Minister of Training, Colleges and Universities Chris Bentley addressed Western law alumni at an Alumni Denning night at

The Duke of Devon in downtown Toronto.

Right now we are planning for a fantastic Homecoming; to be held on September 29. Last year we had more than seventy graduates in the South End Zone

law tent at TD Waterhouse Stadium. The tent provides a wonderful venue and opportunity to mix and meet with other alumni, law students, staff and faculty. Tours of the law school will be held in the morning. UWOLAA will also be holding its Annual General Meeting on this day and all are welcome to attend. Please visit our web site for more information: www.alumni.uwo.ca/branches/law

We are well into the planning process for our Law Alumni Dinner scheduled for October 25, 2007 at the King Edward Hotel in Toronto. This is a great opportunity to get together with alumni and friends. Last year's dinner on campus in London at The Great Hall was a tremendous success. Mr. Dick Pound, Chair of the Olympic Games Study Commission

and Chair of the World Anti-Doping Agency will be our guest speaker this year. The Distinguished Alumni Award will be presented at the dinner. This year's worthy recipient is The Honourable J. Edgar Sexton '62, Judge of the Federal Court of Appeal. In the recent past, our award recipients were The Honourable Ronald G. Atkey, Tracey Tremayne-Lloyd, and James G. McLeod. Email alumnirsvp@uwo.ca or call 1-866-447-1044 to reserve your tickets for the event.

As we quickly approach our two major events for the year, please consider participating. It will be a rewarding experience and it's a great way to support your alma mater and make it stronger. As Western Law Alumni you help define the reputation and success of the law school. Your connection and participation will keep it strong.

I would again like to thank all those who support UWOLAA including alumni and law school staff. They make my participation a delight.

Thank you for the opportunity to have served for another year. I look forward to the balance of our year and successful events. Your participation will ensure that Western Law continues to be a place of excellence for the next generation.

Richard Morelli '95
Borden Ladner Gervais LLP
Waterloo Region
(519) 741-9100 x241
rmorelli@blgcanada.com



"Over the past year we have built on our excellent foundation and have planned for some great events."

Western Law Alumni Photo Album



Niagara Alumni Luncheon

Western Law alumni gathered on June 11 to hear Professor Richard McLaren speak on the the topic: "Law and Gamesmanship Surrounding Performance Enhancing Substances in Sport". The luncheon took place in St. Catherines.

1. Prof. Rich McLaren, Jane Clarkson '88, Robert Culliton '82, Acting Dean Craig Brown and Leanne Standryk '96
2. Patrick Little '74, Prof. Rich McLaren and Don DeLorenzo '84
3. Rocco Vacca '95, Christine Walker (Western alumni officer), Victor Muratori '65 and Tom Wall '98



Colloquium on the Legal Profession

(left) Sherry Kettle '06, Pauline Trudell '81, Justice Thomas Heeney '77, Anne Markle '06, Justice Lynn Leitch '78, Emma Stangl '05, Timothy Hill '84, Melinda Vine '06, Geoff Beattie '84 and Heather Ross '84 at the colloquium held at Western law in May



Toronto Alumni Denning
 The Toronto Alumni Denning Night took place at The Duke of Devon on Wednesday, March 7. More than 50 Western Law alumni mingled and enjoyed a beer tasting and complimentary appetizers. The Honourable Chris Bentley, Minister of Training, Colleges, and Universities shared positive memories of his time as an adjunct Professor at Western Law.



1. Hon. Chris Bentley, Alex Colangelo '01 and Angela Sordi '02 2. Helen Song '95, Liz Kiss '95, Lisa Riegel '95 and Jennifer Trapanier '96
 3. Adam Douglas '04, Oren Weinberg '04, Chris Brett '79 and Prof. Jason Neyers 4. Laurence Prystawski '95, Lissie MacKwen '95 and UWOLAA Pres. Rick Morelli '95 5. Pat Marley '95, Jim Coppolino '95 and George Reis '95

Western Mustangs Game

Western Law Alumni cheered on the Western Mustangs to a 6-2 win over the Lakehead Thunderwolves at the John Labatt Centre on January 21, 2007.

1. From Alumni Relations and Development; Carolyn Lamb, Gary Blazak, Matoula Zesimopoulos, Ross Collishaw and Colleen Jocelyn 2. Jack Brooks '80, Ken Brooks, Simon Davies '71, Chris Little '76, Wayne Petrie '71 and Donald Crawford '68
 3. Western Marching Band 4. Grace Kerr '83, Cheryl Dudgeon '92, Murray Neilson '65 and Carl Micks '82



class action

Angus McKenzie QC and Claude Pensa QC, each received the Law Society of Upper Canada gold medal in May 2007 for their many years of distinguished service to the profession. Each served as adjunct professors at Western Law for many years. The LSM is the highest honour bestowed by the Law Society.

1966

Stephen Adams recently retired from the Board of Governors of UWO after eight years of service and continues his service at Western as the first non-member of the Board to serve on the Audit Committee of the Board. Forty years after graduating from the Western Law School with his LL.B. Degree, he graduated from the University of Cardiff (U.K.) with a LL.M. in Canon Law. In 2000, he was honoured by being appointed the first honorary lay Canon in the 147 years history of the Diocese of Huron of the Anglican Church of Canada. He served as Chancellor of the Diocese from 1990 to 2000 and since 2000 has been Chancellor of the Ecclesiastical Province of Ontario of the Anglican Church of Canada, which includes seven dioceses.

1968

John H. E. Middlebro is now "Counsel" at his firm in Owen Sound (MIDDLEBRO & STEVENS LLP) and has semi-retired. Son, John David Middlebro (2000 - Windsor Law) has become a partner with the five other lawyers at the firm. John Sr. spends most of the winters at Madeira Beach, Florida, and the summers on his yacht "THE REQUIREMENT". He continues in the Real Estate, Corporation and Estates practice as well as acting as counsel and private arbitrations.

1970

William R. Clayton heads the Family Law Group, Lerner LLP and is in his 36th year of practice. William is happily married to Janet, B. A. UWO 1985. They welcomed their third grandchild William (Liam) Thomas Myers, in January 2007. to join Taylor, five, and Lindsay, three.

1973

Jim Emmerton has been appointed the Executive Director of the British Columbia Law Institute replacing the current ED, Arthur Close, who will retire March 2007. BCLI is a not for profit society which promotes and supports the continuous renewal and improvement of BC laws.

1974

Jim Turner has been appointed as a Vice Chair of the Ontario Securities Commission.

1976

Bruce Feldthusen has been named Interim Vice-President (University Relations) at the University of Ottawa. His new appointment takes effect on September 1. Since 1999, he has been Dean of the Common Law section at Ottawa.

1977

G. Wesley Voorheis has been appointed CEO of Hollinger Inc.

1980

Angela Emerson a partner in the Toronto law firm Gilbertson Davis Emerson LLP, an insurance practice, is studying part-time for her Master of Divinity at Wycliffe College at the University of Toronto and expects to receive the degree in May 2009.

Dale Ponder, Managing Partner of Osler, Hoskin & Harcourt LLP was the guest speaker at the Women of Influence Luncheon Series on June 7, 2007. Dale was responsible for one of the biggest deals in Canadian corporate history. She was lead counsel to Inco Limited in connection to one of the most complex and compelling series of deals this year, making her one of three women, and the only Canadian, on the distinguished list of 12 of the top dealmakers of 2006.

1981

Kevin Wark and his wife Sandy have relocated to Calgary where he is SVP Business Development with PPI Financial Group. PPI Financial Group works with independent financial advisors

and supports them in providing tax and estate planning solutions to high net worth individuals and business clients. Kevin's role is to identify and work with financial organizations that would benefit from the unique solutions that PPI can offer to the high net worth marketplace. Kevin can be contacted at kwark@ppi.ca or 403 232-4678.



1982

William J. Benos After being called to the Bar of the Commonwealth of Virginia in 1988, he joined the firm of Wil-

liams Mullen and is now currently a partner. He has enjoyed a wonderful career with Williams Mullen (now a firm of over 300 attorneys) in the field of International Business/Corporate and Immigration Law, and has taught as an Adjunct Professor at the University Of Richmond School Of Law for 14 years. William and Pam have three children Christopher, eleven, Michael, nine and Elizabeth, eight. He served as Honorary Consul for the Government of Canada fostering stronger ties between Canada and Virginia through economic/business development activities.

Dan Dooley and his wife, Elizabeth Quinlan '82, live in Barrie, Ontario. Dan is a partner in Purser Dooley Cockburn Smith LLP and specializes in insurance defence litigation. He is the current President of the Simcoe County Law Association, Vice-President of the Barrie Country Club and a past president of the Barrie and District Rape Crisis Line. Their daughter, Caroline, is at U.B.C. studying science and son, Tim, is in Grade 10 at a Barrie high school.

1983

Helena Birt was Provincial Manager, Family Duty Counsel Services for Legal Aid Ontario from 2000 - 2006. As of April 10, 2007, she moved to the Ministry of the Attorney General as the Transition Director for the new Human Rights Legal Support Centre.

class action

Tracey Tremayne-Lloyd announces that the boutique health law firm of Tremayne-Lloyd Partners, of which she was the managing and founding partner, merged with the business law firm of Gardiner Roberts LLP to form the Health Law and Public Policy section of the Gardiner Roberts firm. The merger puts the Gardiner Roberts law firm in the unique position of being able to service the entire Health Industry, both from the business and advocacy point of view, and allows the lawyers from the previous TLP firm to expand their expertise and client service into the broad spectrum of health law issues including; business, health informatics, charities and not for profit facilities, and professional and public partnerships.

The merger was effective as of February 1, 2006 and the first full year was completed on January 31, 2007. The experience of the first year makes the future of the merger appear very timely and will place the GR firm firmly in the Health Law arena with service offered to business, institutions, professionals and providers of health products and technology alike.



1988

Richard T. Higa has joined the law firm of McCarthy Tétrault as a partner in their financial services practice.

McCarthy Tétrault is one of Canada's oldest and largest business law firms. This is a great step forward after a long and rewarding career at a mid-size firm. His practice focuses on complex debt financings of all stripes with a more recent focus on cross border acquisition financings. He writes, "The course 'Case Studies in Business Law' taught by Rich McLaren really helped get me started. Thanks Rich."

Victoria Reaume is a partner at Cavalluzzo Hayes Shilton McIntyre & Cornish in Toronto where she has been practising union side labour law since her call to the Bar. She represents performers

in ACTRA, teachers, postal workers, and other unions and workers in all aspects of their working lives. She is married to Ken Lung, and has a son, Daniel.

Heidi Zetzshe moved to B.C. to practise law and is presently a sole practitioner in the Cariboo Interior village of 100 Mile House. She lives with her husband, two dogs, three cats, two horses and a donkey on 12 acres and they (not horses and donkey) live in a log house. They enjoy living an outdoors lifestyle with several trips to Europe thrown in to enjoy the big city lifestyle.

1989

David Acri is now in his 16th year as a lawyer in Brampton. In addition to doing family law, real estate and estate work, he is a certified mediator and an adoption licensee. He has just been renewed for a further three years as a Deputy Judge of the Small Claims Court.

David is in his second term as President of the Peel Law Association, an organization of more than 400 members dedicated to advancing the interests of lawyers in Peel County. He recently left the Board of Directors of the Elizabeth Fry Society, an organization that assists women and youth when in conflict with the criminal law. He has also joined the Board of Directors of the Asperger's Society, an association that advocates for individuals with Asperger's Syndrome, a rare form of autism. David has a daughter in high school, and a son who is in the gifted program at his school.

1991

Christopher Bogart is the CEO of Churchill Ventures Ltd. (www.churchillventures.com), a publicly traded investment vehicle that had its IPO in March, as well as continuing as a Managing Director of Glenavy Capital LLC (www.glenavycapital.com). He continues to be based in New York.

Michael Kennedy and his wife Christol had their third child Rachael Marie Kennedy on April 28, 2007. Michael

continues to practice labour and employment law at Hicks Morley LLP.

1992

Mario Paura was awarded the AV Peer Review Rating (Very High to Pre-eminent) according to Martindale-Hubbell, its highest level of professional ranking.

1993

Scott Lamb is currently Legal Counsel at the Financial Services Commission of Ontario where he is practising pension law in the Pension Counsel Unit. This past year he chaired the FSCO United Way Campaign which was the most successful to date. The campaign was awarded the Public Service Employee Campaign Award by the United Way.

Jeremy Tenser was sworn in as a member of the Massachusetts State Bar Association.

1994

Laurie Crocker was promoted to Associate General Counsel - Real Estate for Wal-Mart Canada Corp. in September 2006. Laurie joined Wal-Mart in 2002 as corporate counsel. Previously, Laurie was with McKenzie Lake in London and Toronto.

Andrea Daly, General Counsel at Onex Corporation, was named one of Canada's Top 40 Lawyers Under 40 by L'Expert magazine. It is the second year in a row she has received this distinction.

Adam Fanaki, a partner practising in Borden Ladner Gervais LLP's competition and commercial litigation groups, has accepted a two-year appointment to the position of special counsel to Canada's commissioner of competition, Sheridan Scott. He was named one of Canada's Top 40 Lawyers Under 40 by L'Expert magazine.

Andrew Tolomizenko after almost eight years as General Counsel for The Partners' Film Company Limited, left The Partners' in 2005 to open his private practice in Entertainment and Corporate Law. His practice focuses on film, TV and music issues and includes the burgeoning area of the application of law to new media. As a necessary adjunct to entertainment law, Andrew

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advises his clients on private corporations law and other business models. He is assisted by Valve Leemet, law clerk, and in 2006 Emmanuel Evdemon, BA, LL.B. LL.L (U of O) joined as a junior associate. For more information please visit www.entertainmentlaw.tv

1995

Hayley Clarke was recently appointed Registrar of Joint Stock Companies in Nova Scotia. She was formerly a partner at McInnes Cooper.

1996



Erin Carley and her husband **Daniel Turkstra** (Western MBA '94) announce the birth of their baby girl, **Katherine Ann**.

1997

Jason A. Goldberg was appointed a tax partner of Aikins, MacAulay & Thorvaldson LLP effective February 1, 2007. Aikins is the largest law firm in Manitoba. Jason is married to Ada and have one child age 3 ½, named Leeza Sarah Goldberg.



Mike McConnell and his wife **Tracy** welcomed the birth of their son **Braden Kenneth** in January of this year. He is currently a partner practicing in the business law group at **McCarthy Tetrault** in Toronto.

1998

Michael Bartlett has joined the Federal Department of Justice in Ottawa, assigned to the Department of Fisheries and Oceans.

2001

Paul W. Donovan has joined **Perley-Robertson, Hill & McDougall LLP** as an associate in their Intellectual Property department. In July 2007, Paul will be studying International Intellectual Property law at Oxford University in

London, England. Paul can be contacted at 90 Sparks Street, 4th Floor, Ottawa, Ontario, K1P 1E2. (613) 566-2834 or pdonovan@perlaw.ca.

Keith G. Hunt is Assistant General Counsel – United States, **Labatt Breweries of Canada/Labatt USA** in Toronto.

2002

Tania Harper and her husband **Alan Willemsen** welcomed their second child, **Heather Harper Willemsen**, on February 13, 2007. Big brother **Daniel** is doing a great job and everyone is happy and doing well. Commencing August 2007, **Tania** will be practicing Family Law with **Miller Thomson** in Guelph. She had previously spent 3 years with Family and Children's Services of the Waterloo Region practicing Child Welfare law.

Lynn Iding is working as Policy Counsel at **Legal Aid Ontario**, and completing her LL.M at the University of Toronto.

Birinder Singh has recently finished doing legal policy work as a consultant to the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182. He is currently finishing his residency in Family Medicine at the University of Toronto, and will be starting his own family practice in downtown Toronto starting in September.

2005

Bradley Warden, married **Kristy Mighton** on July 14 in Jordan, Ontario

2006

Tyler Hortie has joined the Corporate/Commercial, Real Estate and Estate Planning Department at **Cohen Highley LLP**.

Sarah Low has joined the Litigation Department at **Cohen Highley LLP**.

Linda J. Visser has joined the Class Actions Law Group at **Siskinds LLP**.

In Memoriam

Percy Smith '69 died on February 27, in a hospice, in Sechelt, British Columbia, at age 64. A graduate of the class of 1969, he was President of the Student Law Society and represented UWO at the premier moot court competition in Ottawa where he was adjudged the best mooter at that four law school competition. **Craig Paterson '70** writes "Percy was the father of three girls, a proud grandfather, and leaves his sister, **Kathy Danforth**, and his loving wife **Sijke Eizinga**, who eschewed the materialist conventions of middle class life, but was strongly committed to the community and public good. He had a strong anarchist vision and conviction, questioned all authority, even his own, and it was an anarchism based on rational thinking, not on emotionalism."

Michael E. Mitchell '63 was a partner in the law firm **Mountain Mitchell**. Called to the bar in 1965 after graduating from the University of Western Ontario Law School, he also held an honours BA from the University of Windsor. He practised administrative law and civil litigation with an emphasis on municipal law, labour and employment law, and commercial litigation. Through the course of his career he acted on behalf of over twenty-five municipalities throughout Southwestern Ontario. Mr. Mitchell served as a seminar leader for the Law Society of Upper Canada Bar Admissions Course in Public Law and as an arbitrator and referee for disputes under the Canada Labour Code.

Jeevan Marc Mykoo '04, died July 21, 2007 as a result of an accident. Mr. Mykoo articulated at an Oshawa firm and with the Sierra Club of Canada. He was a policy analyst with Environment Canada since 2005. In June, he received a department citation of excellence for his work on the development of the Clean Air Act. He also worked on the Parliamentary Review of the Canadian Environmental Protection Act. He is survived by his mother, father and sister. ☞

closing arguments



Prof. Margaret Ann Wilkinson

Privacy in the digital age

Everyone wants information. Information is a source of power, prestige, influence, and competitive edge. Competition for access to information and for control over sources of information is global and fast-paced.

The cracks and fissures in the existing areas of law that deal with information are becoming ever deeper and more treacherous. One continuing area of challenge and debate is the relationship between privacy law and personal data protection. Many people consider the two concepts as synonymous, but under the law they are different constructs. One stream of my research explores the legal distinctions between these two areas.

Privacy law is not codified in many jurisdictions - Saskatchewan and Quebec are among the few with legislative enactments. In Saskatchewan, privacy legislation exempts newspapers from its purview. Quebec's *Charter of Rights and Freedoms* does not, and, in 1998, the Supreme Court of Canada in *Aubry v. Editions Vice Versa* specifically held that a magazine had no right to publish the photo of a 17-year-old girl, taken in a public place, unless she consented.

Following up on the effect of *Aubry*, I have completed a large study involving the *Montreal Gazette* and the *Regina Leader Post*, two CanWest Global newspapers, examining their practices over 10 years by analyzing photographs of more than 7,000 individuals.

The waters are further muddied by the fact that the *Gazette* and *Leader Post* are both governed by the *Personal Information Protection and Electronic*

Documents Act (PIPEDA), the federal personal data protection legislation - both because Saskatchewan's private sector activities are governed by PIPEDA and because both newspapers deal with data transported across provincial boundaries. In addition, the *Gazette* is subject to Quebec's own personal data protection legislation for the private sector. These legislative enactments are commonly, but inaccurately, referred to as "privacy legislation."

Like the Saskatchewan privacy legislation, all this personal data protection legislation contains an exception for journalistic activities. However, we have seen that, in Quebec, privacy has been held, by the Supreme Court, to prevail over freedom of the press. This situation prompts two questions: are the values embedded in personal data protection so different from the values represented by privacy that such a distinction between them makes sense?; and, should the value of privacy in Quebec triumph over other values, such as freedom of the press, in ways that it does not elsewhere in the country?

Another example of the complex relationship of personal data protection and privacy is *BMG Canada Inc. v. John Doe*. In this case a number of music industry players sought to sue Internet users for copyright infringement in Canada. The users were alleged to be infringing the copyright interests of the music industry but were only known to the music firms by their pseudonyms on the Internet. In initiating the suit, the music firms brought a motion in the Federal Court to compel certain In-

ternet Service Providers (ISPs) to reveal the identities of these users.

This motion could be characterized as involving conflict between the interests of copyright owners and the value of privacy for the users of the ISPs services - and the courts considering it looked at this conflict. On appeal of the first order on the motion, the Federal Court of Appeal, in 2005, found against the applicant plaintiffs, but on grounds other than those related to privacy - and indeed, the Court encouraged further motions by the plaintiffs, intimating that such motions, despite objections based on privacy, should succeed.

The motion, however, actually highlights differences between the law of privacy and personal data protection. In my view, the plaintiffs should have failed completely in their attempt to compel disclosure of the identities of the ISPs' clients - on the basis of personal data protection legislation. Unlike the law of privacy, which is less well developed in Canada, personal data protection legislation such as PIPEDA clearly reflects a public interest that the kind of information at issue in *BMG v. John Doe* be protected.

These two examples bring into stark relief the fact that the values reflected in privacy law and in personal data protection legislation are not yet fully harmonized and require further consideration in many contexts.

Prof. Margaret Ann Wilkinson teaches Intellectual Property and Information law.





Prof. Chris Nicholls

Bre-X redux

The valuable lesson learned from Canada's mining debacle

During 1998 and 1999 I had the privilege of speaking at conferences in Canada, the United States and South America on the then-hot topic of Bre-X Minerals. The Bre-X “salting” scandal had been a stunning blow for investors, and a great embarrassment for Canada. Almost a decade later, Bre-X was back on the front pages. On July 31, John Felderhof, the only person ever charged with any sort of wrongdoing in connection with Bre-X, was acquitted by the Ontario Court of Justice on all charges against him (none of which, it should be said, involved allegations that he participated in, or was even aware of, the “salting” fraud.)

When a newspaper reporter called me to discuss the Felderhof decision, I dug out articles I had written about Bre-X in the 1990s, and flipped through stacks of research material I had compiled at the time. I also waded through the almost 600-page judg-

ment issued by the court in July, reminded of Dr. Johnson's famous comment on Milton's epic

“...perhaps even a gold scandal can have at least a silver-plated lining.”

poem *Paradise Lost*, that no one ever wished it longer. Mr. Felderhof's acquittal aside, did the Bre-X fiasco, I wondered, or the cluster of U.S. accounting scandals that followed it, offer any particular lessons to students or professors of law – especially at a law school that has chosen as its focus “Business Law in the Global Environment”?

Market scandals—whether Bre-X, or Enron, or WorldCom or the South Sea Bubble of 1720, for that matter – tend to convince those already wary of the world of finance that the whole for-profit sector is irredeemably corrupt. Legislators, eager to assure voters how sincerely they feel their pain, quickly try to outdo one another expressing their shock and outrage over such disasters, while offering the victims prayers, pledges of support, and a sometimes skewed legislative agenda.

But the harm of financial scandals is not simply that aggrieved investors lose

money, or that the cynical lose (further) faith. These are two painful symptoms of a more fundamental problem. Every dollar invested in rogue corporations could have been invested, instead, in productive business ventures that would have paid taxes, created jobs and contributed to the nation's wealth. As bogus ventures compete for a share of investors' scarce financial resources, the cost of capital for worthier businesses increases. Resources are misallocated. The economic “pie” shrinks. And that's bad not just for multinational corporations and their (sometimes overpaid) CEOs, it's also bad for government, for hospitals, for homeless shelters, for food banks—in short, for everyone. Financial markets matter to us all. And we all, therefore, have an interest not in disparaging or undermining them, but in working to ensure and enhance their integrity.

This fact is not always appreciated by law students or even, it must be said, by some of their professors. Too often it is assumed, quite mistakenly in my view, that those who wish to serve the public good must invariably look elsewhere than the private sector. But the private/public interest distinction is not quite so clear as that. A concern for business, and the legal context in which it operates, does not imply a neglect of the public interest. It can signal, instead, concern for the mechanism by which society provides for its citizens' material needs. A stable, honest and efficient business environment complements our shared commitment to the pursuit of human dignity, equality, security and freedom. If the occasional pain of financial scandals serves to remind us of how critically important it is to learn more about the operation and regulation of business and financial markets, then perhaps even a gold scandal can have at least a silver-plated lining.

*Prof. Christopher Nicholls is the Director of the Business Law program at Western Law. His book *Mergers, Acquisitions and Other Changes of Corporate Control* was published in 2007. He is currently completing a fifth book on the regulation of financial institutions.* 



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