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len rotman on fiduciary duties page 4

mediation services celebrates 10th birthday

program invaluable in the pursuit of access to justice

by adam vasey '02

Master Robert N. Beaudoin '79, Dr. Julie Macfarlane and former Attorney General Charles Harnick '75

The **University of Windsor Mediation Services** (**UWMS**) celebrated its 10th Birthday by hosting a symposium at which distinguished alumni, former Attorney General Charles Harnick Q.C., L.S.M. '75 and Master Robert N. Beaudoin '79, reflected upon the past and future of mandatory mediation in Ontario.

As the first clinical mediation program to be established in a Canadian law school, the **University of Windsor Mediation Services** began humbly: as a single phone tended on a volunteer basis by Dr. Julie Macfarlane and a small group of students. Since that time, it has made tremendous strides. Generous financial support from Osler, Hoskin and Harcourt LLP, the Law Foundation of Ontario, and the University of Windsor has allowed **Mediation Services** to expand its role in the Windsor-Essex community and also meet growing student demand.

The Director, Gemma Smyth '02, oversees the rapidly increasing caseload, which offers students invaluable for-credit experiential learning through the *Mediation Clinic* and *Advanced Practicum in Mediation and Conflict Resolution* programs.

Committed to providing free client-centred conflict resolution services, and engaging in community outreach with at-risk youth and young offenders, high school students, and numerous not for profit agencies, **Mediation Services** truly embodies Windsor Law's theme of "Access to Justice".

Harnick and Beaudoin spoke eloquently about the inextricable link between mediation and access to justice. Both noted mandatory mediation's role in enhancing access to justice. As Attorney General of Ontario from 1995 to 1999, Harnick was instrumental in bringing mandatory mediation to fruition. Mandatory mediation, which began as a pilot project in Ottawa in 1997 and has since expanded to Windsor and Toronto, has admittedly endured growing pains, particularly in Toronto. As Harnick pointed out, however, since 1999, the settlement and partial settlement rates for mandatory mediation have hovered around a very respectable 50 percent.

While legal aid, *pro bono* work, contingency fees and class actions have all had a hand in expanding access to law, Harnick called mediation "the single most significant tool we have to make our court system … accessible". He added that, while we must enhance people's ability to get into the legal system, it is equally important that we provide them with opportunities to get out of the system affordably. Despite the inherent challenges facing mediation, Harnick was confident that skepticism toward mediation will wane as more lawyers are trained as mediators and experience, firsthand, the benefits of mediation. Harnick concluded by calling on the current Attorney General of Ontario to provide the necessary technology for expansion of the project.

Robert N. Beaudoin, Case Management Master for the Ontario Superior Court in Ottawa, argued that mediation's ability to offer timely, affordable access to justice and a "client-centred approach to advocacy" makes it integral to the successful administration of justice. Although more than 90 percent of cases resolve without going to trial, Master Beaudoin called the statistic misleading, since many involve late settlements which still force clients to pay dearly in time and money. Mandatory mediation addresses this deficiency by accelerating the negotiation process while giving the clients ownership over the resolution of their conflict.

Beaudoin noted that mediation's sometimes "touchy-feely" image can be easily dispelled when one views it as simply "assisted negotiation". As Beaudoin observed, the legal profession often obscures the important distinction between "cases" and "problems" and "victories" and "resolutions".

Dean Bruce Elman presented Certificates of Appreciation to Mark Leach '77 representing the Law Foundation of Ontario and Michelle Dobranowski '03 representing Osler Hoskin Harcourt LLP

Often, he added, clients want to tell their stories and, once they have done so, might be entirely satisfied with an apology and a handshake.

Both Harnick and Beaudoin concluded that programs such as the **Mediation Services** are invaluable in the pursuit of access to justice because they raise the public profile of mediation as a viable and inherently democratic form of dispute resolution.

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professor david tanovich: excellence in scholarship

Professor David Tanovich was one of four junior faculty members at the University to be awarded a **2005 University of Windsor Award for Excellence in Scholarship, Research and Creative Activity**.

In presenting the Award of Excellence to Professor Tanovich, Dr. Susan McDaniel, then Vice-President, Research, noted: "Professor David Tanovich joined the Faculty of Law in 2003. His three books on jury selection, on criminal law, and on criminal evidence, are soon to be followed by two more – one on evidence and a second on racial profiling and criminalization of diversity, both forthcoming in 2005."

Dr. McDaniel continued: "David Tanovich is described by one external reviewer as 'an outstanding and committed scholar.' This reviewer goes on to say that 'David's love affair with research was evident from the time he was a student. David chooses timely, often cutting edge topics – things that matter – and it is evident that he becomes consumed with ideas and possibilities.' Another external reviewer reports, 'It is astonishing that Professor Tanovich has achieved such an impressive research record at such an early stage of his academic career.' Another reviewer, on the same theme, adds, 'I cannot think of any law teacher, junior or senior, as productive as David has been since arriving at Windsor. His achievements both in terms of quantity and quality are extraordinary.'

It has been a "banner year" for Professor Tanovich. In what must certainly be a unique achievement, Professor Tanovich delivered two prestigious named and endowed lectures this academic year – the **2005 F.B. Wickwire Memorial Lecture** at Dalhousie Law School and the **2006 Culliton Lecture** at the University of Saskatchewan.

The F.B. Wickwire Memorial Lecture is named in memory of prominent Halifax lawyer, F.B. Wickwire. The Lecture was delivered in November 2005. Professor Tanovich spoke on "The Legal Reconstruction of Role Morality in Canada – In the Interests of Justice". The Culliton Lecture was established in honour of the retirement of Chief Justice Edward Culliton, a former Chief Justice of the Province of Saskatchewan. The Lecture took place in January 2006.

Professor Tanovich was also a featured speaker at the first critical race conference held in Toronto in October, 2005. He addressed "The difficulties in litigating racial profiling cases."

Congratulations, Professor Tanovich!

five faculty members receive faculty recognition awards

Faculty Recognition Award Winners (LtoR): Bill Bogart, Reem Bahdi, Sukanya Pillay, and Len Rotman

The University of Windsor awarded five **2005 Faculty Recognition Awards** to members of the Law Faculty at the recently held **Celebration of Research and Scholarship Excellence**. Dean Elman noted what a great pleasure it was for him and his colleagues to have so many accomplishments to recognize at this year's event.

Professor Reem Bahdi was recognized for having received a $4.5 million grant from the **Canadian International Development Agency (CIDA)** for her project on "Canadian-Palestinian Judicial Education." Over the next four years, Professor Bahdi will work closely with partners in the Palestinian Authority as well as with a cadre of Canadian judges to educate the Palestinian judiciary on the rule of law and human rights.

Professor W. A. Bogart made major contributions to research and scholarship during the past academic year with the publication of his book, **Good Government? Good Citizens? Courts, Politics, and Markets in a Changing Canada**, which examines the interaction of law and social issues with an emphasis on the growing influence of rights and the ascendance of the courts as arbiters of issues confronting the post-industrial state. Professor Bogart also co-edited a collection of papers (with Julia Bass and Fredrick Zemans) entitled, **Access to Justice for a New Century: The Way Forward**, published by Irwin Law.

Dr. Julie Macfarlane received the **2005 Award of Excellence** from the **International Academy of Mediators**. The Award, presented in May 2005, represented the first time that a Canadian had ever received this honour. And, it is only the second time that a woman has achieved this honour. This is a notable achievement and fitting recognition of Dr. Macfarlane's exceptional career as a researcher and scholar in the area of alternative dispute resolution.

Professor Sukanya Pillay created **Robbing Pedro to Pay Paul**, a one-half hour BBC documentary which explores the impact of globalization and NAFTA on Mexican corn farmers. While world leaders negotiate international trade policies related to agriculture, Professor Pillay's documentary examines how these policies are robbing farmers in developing countries of their livelihood. In addition to having been shown on BBC, the documentary was aired on **CBC's Newsworld**, and has been shown at five law schools in Canada and the United States. Professor Pillay has a unique combination of research, scholarship, and creative activity.

Dr. Leonard Rotman made a major contribution to research and scholarship during the past year with the publication of his book entitled **Fiduciary Law**. This book is the first in Canada to examine the nature of the fiduciary relationship and obligations to which it gives rise. The book is a significant Canadian contribution to the growing worldwide literature on the subject. Particular emphasis is placed upon the fiduciary relationship between the Crown and Aboriginal people – a novel use of the principles of fiduciary law.

Congratulations to all!

francine herlehy named assistant dean (student services)

Francine Herlehy '89, Director of Career Services, has been appointed **Assistant Dean (Student Services)** commencing February 1st, 2006. Francine has spent the past four years as Director of Career Services for the Law School. She will use the knowledge and experience gained during her tenure in that position in her new role as Assistant Dean (Student Services).

"For the past five years we have been investing in student services. The next logical step was to create a position at the Assistant Dean level to oversee existing student services and broaden the scope of services to meet student needs," Dean Bruce Elman noted. "I cannot think of anyone more qualified to lead us in the development of this Office than Francine. We are very pleased she accepted the position."

The Assistant Dean's role begins with the applicant. The Assistant Dean will oversee the admissions process and provide advice to the prospective student. The goal is to ensure that Windsor Law continues to attract a diverse student body committed to our institutional themes of "Access to Justice" and "Canada-US Legal Issues". The Assistant Dean will provide program counselling as well as indebtedness counselling to assist students in both financing their legal education and managing their debt load. The Assistant Dean will play a major role in Windsor Law's extensive program of scholarships, bursaries, and other types of student financial support.

The office will also work towards ensuring that students at Windsor Law have access to a broad range of law school experiences including international exchanges and domestic and international internships and externships. The Assistant Dean will also provide strategic support to the Dean and Associate Dean on policy matters relating to the Faculty of Law, the University, legal education and the legal profession.

Francine practiced civil litigation in Windsor for 11 years, most prominently with Sutts Strosberg LLP, prior to her return to Windsor Law. She is a member of the Ontario Trial Lawyers Association, the Advocates Society, NALP – The Association for Legal Career Professionals, the Canadian Legal Career Development Network, the Essex Law Association, and the Essex County Association of Women Lawyers. Francine has lectured at the Faculty, was an instructor at the Bar Admissions Course and is active in continuing legal education programs both as a presenter and participant.

jeff berryman appointed to research leadership chair

Professor Jeff Berryman, an internationally renowned remedies scholar, recently became the first holder of Windsor Law's **Research Leadership Chair**. The University of Windsor established the Research Leadership Chair in 2004 as a complement to the Canada Research Chair program.

The five-year appointment will allow Professor Berryman to promote and enhance research and scholarship in the Faculty of Law. It will also provide him additional resources to pursue an individual research agenda.

Dean Elman was pleased with Professor Berryman's appointment: "There were a number of excellent submissions from members of our Faculty. A committee reviewed the submissions and was uniformly impressed by the high quality of the applications." After a very careful examination of all of the applications, the Committee chose Jeff Berryman, a former Dean of the Faculty, as its first nominee for the **Research Leadership Chair in Law**.

"The Committee was impressed by both the quantity and quality of Professor Berryman's scholarship as well as by his plan of activity for Research leadership," Dean Elman continued, "Based upon his strong ties across the University's Research community as well as his ongoing leadership role within the University, he would provide excellent leadership to younger colleagues as the **Research Leadership Chair in Law**. Professor Berryman has strong ties to the American academic community as well as scholars throughout the Commonwealth. I am certain he will provide strong research leadership to our Faculty as the initial holder of the Research Leadership Chair."

Professor Berryman's mandate will include fostering and supporting research among peers, particularly younger faculty. He will also act as our liaison with the Office of Research Services, oversee the development of a research webpage, coordinate research workshops, and explore the creation of a graduate program in law.

As part of his individual research plan, Professor Berryman hopes to complete a comprehensive hallmark text on the Canadian Law of Equitable Remedies.

Q&A

faculty focus: len rotman

developing a unique vision of the concept of a fiduciary

In his most recent book, Windsor Law professor Len Rotman challenges the orthodoxy that fiduciary law is inherently vague and confused. In *Fiduciary Law*, he traces the confusion to a fundamental lack of understanding, and develops a unique vision of the fiduciary concept that is functional and rooted firmly in history. **Len Rotman** recently sat down with **Adam Vasey '02** to bring much-needed clarity to this misunderstood area of law.

Why are you interested in fiduciary law?

My interest stems primarily from Crown-Aboriginal relations, and particularly the discussion of fiduciary law in the *Guerin* case. I found the principles really interesting, but as I started to do my own research on fiduciary law generally, I wasn't finding appropriate or acceptable answers in either the commentary or the jurisprudence. So I just started digging, and now I'm still digging.

education:

B.A. (Hons., with Distinction) 1988, University of Toronto

LL.B. 1991, Queens University

LL.M. 1993, Osgoode Hall

S.J.D. 1998, University of Toronto

appointments:

Assistant Professor of Law
University of Alberta, 1996

Assistant Professor of Law
University of Windsor, 1998

Associate Professor of Law
University of Windsor, 2000

Professor of Law
University of Windsor, 2001

teaching (2005-2006):

Constitutional Law

Aboriginal Law

Fiduciary Law

Special Lectures on Aboriginal Law

publications:

Fiduciary Law

Canadian Corporate Law: Cases, Notes and Materials 2nd and 3rd eds (with B. Welling and Others)

Aboriginal Legal Issues: Cases, Materials and Commentary 1st and 2nd eds (with J. Borrows)

Parallel Paths: Fiduciary Doctrine and the Crown-Native Relationship in Canada

Could you explain a little bit about the fiduciary concept and its underlying purpose?

One of the interesting things about fiduciary law is that there isn't a lot of agreement on it, especially on its purpose, and often you find the courts applying fiduciary law without really discussing its purpose. The purpose of fiduciary law, in my view, is to foster interdependency, which allows for specialization. Specialization, in turn, promotes knowledge and invention and industry, which contribute to the greater good. So, for example, instead of you or I having to grow all of our own food, if somebody else is growing food which we can purchase, that gives us time to engage in other pursuits. Ideally, society will be better off with a variety of specialists rather than a number of generalists. More specialization, however, also leads to more dependency.

So this is why trust is so fundamental to your "operational vision" of the fiduciary concept.

Exactly. There is a reason why fiduciaries are subject to higher standards than people in ordinary contractual relationships. The generic aspect to all fiduciary relationships – whether doctor-patient, lawyer-client, or director-corporation – is trust, reliance upon others. You expect these specialists to work on your behalf, and not for their own benefit or for the benefit of others. But because they have power over your interest, because you're dependent upon them, you're always at least potentially susceptible to abuse. Fiduciary law fosters interdependency by providing a method of redress if something goes wrong. It's almost like a money-back guarantee.

You mentioned the higher standards attached to fiduciary law. Can you talk about the relationship between fiduciary law and common law?

Law has to be general, but sometimes applying the general law promotes injustice. Fiduciary law has its roots in the English courts of equity, which were designed to fill in the gaps of the common law. Contract law works most of the time, but fiduciary law applies to those situations of high trust and confidence where contract won't work. Because the standards in fiduciary law are higher, the remedies are harsher. This gives fiduciary law its deterrent effect.

You have said there is a considerable amount of misunderstanding surrounding the fiduciary concept. What are the common misconceptions?

One misconception is the idea that fiduciary relations only exist between parties of unequal power, such as parent-child or guardian-ward. Now, these are certainly fiduciary, but when the same types of examples are always used in judgments and commentary, it creates the impression that fiduciary law only applies in cases where one party is all-powerful and the other party has no power. As I emphasize in the book, fiduciary relationships can also exist between parties of equal power, business partners being a good example. If partner A decides to enter into a contract and doesn't advise partner B, partner B then is vulnerable. Partnership is, therefore, a good example of a reciprocal fiduciary relationship. They are unequal within the fiduciary nature of the relationship, but there's no requirement that they have to be inherently unequal outside of that. A second misconception is that all elements of a fiduciary relationship are necessarily fiduciary. Take the doctor-patient example, which is clearly a fiduciary relationship. If a doctor gives a patient stock advice, the patient can't then sue the doctor for breach of fiduciary duty.

You note that, while the fiduciary concept is no less fluid than certain common law concepts – such as the "reasonable person" or the "best interests of the child" – criticism of it is disproportionately harsh. Why is this?

I don't really know why that is, which is part of the reason I write about it in the book. It's an ordinary legal process to start with a general, overarching principle and then get into more of the details. Fiduciary law, in this regard, is no different from the common law. You start with the general principle that certain relationships are of fundamental importance to society, and that the vulnerable parties within them ought to be protected, and then you fill in the gaps.

Explain what you mean by the "fiduciary paradox".

The paradox is this: fiduciary law is constantly being argued in many different areas of law, yet it's clear from the commentary, even judicial commentary, that people don't really know what it is. The best way to eliminate this paradox, to clear up the vagueness and uncertainty, is through education. Before we can understand how fiduciary law ought to be applied, we must understand where it comes from, why it exists, and how it functions. Once we achieve that level of understanding, my hope is that the paradox will implode.

How realistic is this type of change, especially given the complexity of relationships in an increasingly specialized society?

Fiduciary law has survived for hundreds of years because the fundamental principles it seeks to uphold are good ones – particularly for a growing and increasingly complex society that requires some form of legal protection for all the circumstances in which people find themselves. In an era of so-called "globalization", there's an even greater need to insulate people from abuse and improper opportunism. Fiduciary law, I think, is sufficiently fluid to provide this protection.

faculty opinion: myra tawfik

creative destruction: the supreme court of canada and the limits of intellectual property rights

Over the last few years, the Supreme Court of Canada (SCC) has been unusually active and decidedly *activist* in intellectual property (IP) law cases. There is no doubt that this increased interest is a reflection of the growing importance of the knowledge-based economy and the belief that IP rights are the engines to drive it. But the Court's interventions can also be seen as a reaction to a growing aggressiveness on the part of IP rights holders to push the boundaries of their monopolies to greater extremes both domestically and internationally. The SCC has been making it clear that IP rights must be delimited.

For example, the Court has ruled that Canadian patent law does not permit the patenting of higher life forms. A living organism, such as the transgenic mouse at issue, can never constitute an invention capable of being appropriated. In its last three copyright law decisions, the Court has been very clear that the law must balance the competing interests of the copyright holder with those of users of copyright material. In fact, the pronouncements on copyright culminated in the remarkable decision of *CCH Canadian* v. *LSUC* in which the Court referred for the first time to "user rights", invoking the language of 'rights' to emphasize that copyright holders and users of copyright material stand on equal footing under the law.

In its most recent foray, the Court upheld the jurisprudentially-created doctrine of functionality as an overarching bar to trademark rights in primarily functional shapes. In *Kirkbi AG* v. *Ritvik Holdings Inc*, at issue was the well-known shape of the LEGO brand toy bricks. The patent on the bricks had expired in 1988 and LEGO sought to perpetuate its monopoly by arguing that the shape of the bricks had acquired distinctiveness under trademark law. Although Canadian law does recognize trademark rights in shapes, the courts had long held that primarily functional shapes – those shapes necessary for the functioning of the product itself - could never benefit. The idea that a former patent holder could claim trademark rights in the functional shape of its product – the very shape in respect of which a patent had been obtained – had always been seen as an inappropriate extension of monopoly. The doctrine of functionality was developed to guard against such undesirable 'evergreening' of patent rights under the aegis of trademark law.

In confirming that the doctrine of functionality was a legitimate limitation on trademark rights, whether under the statute or under the tort of passing-off, the Court stated:

> Granting such a claim in these circumstances would amount to recreating a monopoly contrary to basic policies of the laws and legal principles which inform the various forms of intellectual property in our legal system. The appellant is no longer entitled to protection against competition in respect of its product. It must now face the rigours of the free market and its process of creative destruction.

In this increasingly commercialized and consumerist society, in which it often seems that a proprietary interest is claimed in just about every possible intellectual exercise, the Court's clear message serves as a critical reminder to jurists and policy-makers alike: over-protection can be as pernicious as under-protection. Fostering creative destruction and ensuring the continued existence of a public domain are as important to a healthy IP system as the safeguarding of exclusive rights.

Myra Tawfik teaches Copyright Law, Trademark Law and the Law of Confidential Information. She recently published "Follow the Lego Brick Road: The Doctrine of Functionality under Canadian Trademark Law" in volume 15 Molengrafica Series (Antwerp: Intersentia, 2005).

mccarthy tétrault creates leadership awards

In celebration of the McCarthy Tétrault LLP's 150th Anniversary, the firm has established the **McCarthy Tétrault Leadership Awards**. The awards were established to recognize the leaders of tomorrow. Two leadership awards of $5000 each will be given annually at the University of Windsor Law School and other schools across Canada. One first-year and one second-year student will receive the Award based upon strong academic performance and demonstrated initiative and leadership qualities through participation in extra-curricular activities within the law school or general community. At McCarthy Tétrault LLP, leadership is viewed to be as important as academic quality. McCarthy Tétrault has achieved its reputation through hard work, legal excellence and consistent strategic planning by strong leaders.

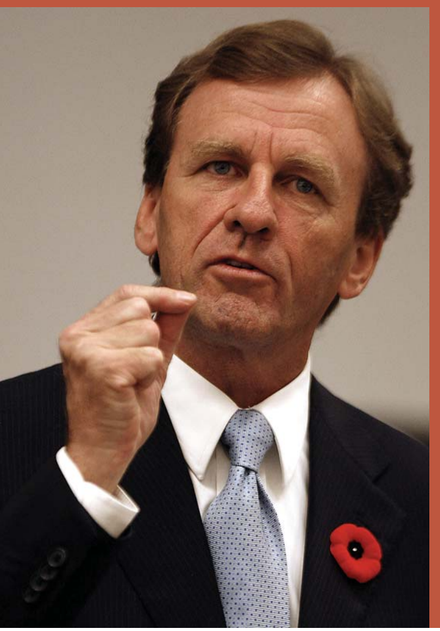
"Leadership is about inspiring others to achieve their potential and reach their goals. We have created the **McCarthy Tétrault Leadership Awards** to celebrate the leadership potential in today's law students and to encourage others to carry on the tradition of excellence" states W. Iain Scott, Chairman and CEO, McCarthy Tétrault LLP.

Dean Bruce Elman noted: "I am very pleased that McCarthy Tétrault LLP has seen fit to celebrate their 150th Anniversary by inaugurating the **McCarthy Tétrault Leadership Awards**. These awards are particularly appropriate at Windsor Law where we prize community involvement and leadership both in our admissions criteria and in our internal philosophy and culture."

The inaugural winners will be announced in June, 2006.

Dean Bruce Elman with W. Niels Ortved, Litigation Partner, and Sheena MacAskill, Director of Professional Services

ambassador rock delivers 2nd herb gray distinguished lecture



How should the United Nations adapt to meet new global challenges? What role should Canada play? Students, lawyers, professors, and community leaders filled the Moot Court at the University of Windsor Law School to hear His Excellency Allan Rock, Canadian Ambassador to the United Nations, answer these questions. His address, entitled *The United Nations at a Crossroads: Why Canada Believes Now is the Time for Change*, was the **2nd Herb Gray Distinguished Lecture**, a series which focuses on Canada's place in the world and on what it means to be Canadian. Dr. Harvey T. Strosberg Q.C., D.C.L. '03 chaired the evening and introduced the Honourable Herb Gray, who spoke briefly to the standing-room only crowd.

Ambassador Rock, who was introduced by friend and former colleague Justice Eleanore Cronk '75, D.C.L. '04, was appointed Ambassador to the UN in 2004. He spoke passionately of his experiences at the "epicentre of multilateralism", and outlined Canada's instrumental role in the "Responsibility to Protect" policy, which authorizes UN intervention in cases of genocide and other atrocities. He also noted Canada's involvement with the Peacebuilding Commission, which promotes good governance within developing democracies, as well as the creation of the Security Council Report, which he argued will be a reliable source of information and critical analysis.

However, Ambassador Rock conceded that the UN has become increasingly splintered in the post-Cold War era. He cited United States' unilateral tendencies, conflict in the Middle East, and the failure to meet development goals in the global South as the "three principal contaminants in the UN atmosphere". If the UN is to remain relevant and effective, he concluded, it must

demonstrate an unwavering commitment to multilateralism and a willingness to undertake reforms which will enhance its accountability, such as the elimination of permanent membership in the Security Council.

Ambassador Rock praised the Right Honourable Herb Gray, who was in attendance, for serving Windsor and Canada with an "enduring humility" over his unprecedented tenure of almost four decades in the House of Commons. As Ambassador Rock remarked, the future success of the UN hinges on the vision and dedication of leaders such as Mr. Gray.

lerners' cup capstone to legal writing and research course

Lerners LLP will provide an important capstone to Windsor Law's highly rated first year Legal Writing and Research (LWR) Program. LWR concludes with exercises in both written and oral advocacy through the factum writing assignment and moot court arguments. **The Lerners' Cup** will provide a fitting culmination of the advocacy portion of the program. The announcement was made by Michael M. Lerner, Partner in Lerners LLP and Dean Bruce P. Elman.

"At Windsor Law, we place great emphasis on clinical and experiential learning," noted Dean Elman. "The Legal Writing and Research Program is the fundamental course upon which our entire clinical and experiential program is based. Having Lerners involved can only add to the profile and prestige of the program, mooting and our entire emphasis on experiential learning."

Michael Lerner was equally enthusiastic. "We at Lerners are delighted to be able to extend our relationship with the University of Windsor Law School in this manner. Were it not for Windsor, we would have a lot of empty offices and fewer partners. We feel we are privileged to be able to contribute to Windsor's academic program in so many meaningful ways." Lerner further stated, "we welcome the opportunity to partner with our colleagues at the University of Windsor Law School and to enhance the Legal Writing and Research Program offered to first year students."

The final round of the **Lerners' Cup** will involve the top six student mooters – three appellants and three respondents (one each from the three LWR sections) – as chosen from the preliminary rounds of the LWR moots. The judges will be drawn from the Courts and from the senior members of the Bar. Prizes and a remembrance from the event will be awarded to all the finalists.

"Lerners is well known for its strength in litigation. We have many alumni at the firm. This is a natural partnership and I am looking forward to the first competition," stated Dean Elman.

michael bryant discusses unique role of the attorney general

Ontario Attorney General Michael Bryant visited Windsor Law early in the Fall Term. The Moot Court Room was filled to capacity to hear the Attorney General address the topic of *The Attorney General in the 21st Century*. "The Attorney General occupies a unique position in our constitutional system," Bryant noted, "The Office has unique responsibilities to the Crown, the courts, the Legislature and to the executive branch of government."

Bryant went on to point out that the Attorney General wears two hats: a "political" hat as a member of cabinet and a member of the government and a second hat as the "Chief Law Officer of the Crown". "When wearing this second hat," Bryant stated, "the Attorney General has a constitutional obligation to act independently of Cabinet and of the Premier."

Providing the students with a lesson in comparative constitutionalism, Bryant pointed out that in Great Britain, the Attorney General is an elected member of the government and is its chief legal advisor but sits outside of cabinet. In the United States, the Attorney General is a member of the Cabinet but is not elected, is not a member of the Legislature and is not directly accountable to the electorate. In other jurisdictions such as Bermuda, Singapore, Israel and Hong Kong, the Attorney General is a public servant – not an elected official.

"Combining the role of cabinet minister with chief law officer of the Crown is one of the creative geniuses of our constitutional system," the Attorney General declared. "At times it produces tensions, but on the whole it ensures that the Constitution is always spoken for at the highest levels of Government. And that is one of the most important roles of an Attorney General in 21st Century."

"The Attorney General has a constitutional obligation to act independently..."
Attorney General Michael Bryant

new reference librarian!

The **Paul Martin Law Library** has been pleased to welcome Ms. Annette Demers '98 as the new Reference Librarian, effective August, 2005.

Annette comes to us from the Harvard Law School Library (3 years, 2002-05). She is no "newcomer" to this Law School, having completed her law degree at Windsor Law in 1998. Annette then articled and practiced in the Windsor area. Ms. Demers completed her library degree at the University of Western Ontario in 2002.

She has an avid interest in international law, being a member of the International Association of Law Libraries, and an editor of the A.L.L. Foreign, Comparative & International Law's Special Interest Section Newsletter. Annette also was the author of "Table 2, Foreign Jurisdictions" in the forthcoming edition (18th edition) of the Harvard Law Review Association's *The Bluebook: A Uniform System of Citation*. This standard reference is mandatory reading for Law 1s at most U.S. law schools.

windsor conference addresses development and human rights

by adam vasey '02

Can developing countries successfully implement market-based reforms while simultaneously maintaining a commitment to human rights? Pre-eminent scholars and practitioners from across the human rights and law and development communities gathered at the University of Windsor Law School recently to answer this difficult question. The Conference, entitled *Human Rights and Development: The Challenge of Dual Transition*, was hosted by the **Centre for Law in Aid of Development (CLAD)** and featured a keynote address by Dr. Clarence Dias, President of the UN's International Center for Law in Development.

In his keynote address, *The Changing Context of Development Cooperation: Human Rights Challenges and Opportunities*, Dr. Dias used an illuminating case study of Nicaragua to demonstrate the importance of a human rights based approach to development. Specifically, Dr. Dias stressed that contracts between donor agencies and recipient governments must be binding and enforceable, and that local participation must be conceptualized as "both a means and an end to development".

"Resources are being siphoned by thieves that steal money in the billions."
Professor Paul Ocheje

In a subsequent paper, delivered as a conference participant, Dr. Dias called upon law and development scholars and practitioners to respond innovatively to increasing privatization and shrinking development assistance resources. As Dr. Dias stated, we must "apply human rights values, principles, standards and goals to every stage of development programming", including design, monitoring, implementation and evaluation. Only then, he concluded, will the development process achieve greater participation, transparency, accountability, empowerment and equity.

In a similar vein, Professor Emeritus James C.N. Paul, of Rutgers University, called development a "process through which all human rights will be realized." Professor Paul, a founder of the Law and Development movement and longtime friend and colleague of Dr. Dias and Windsor Law **Professor Emeritus Lakshman Marasinghe**, said it is time for the law and development community to move beyond generalities. Professor Paul articulated six specific categories of human rights (security, participation, equality, cultural, development and rule of law) which developing countries must embed in their legal orders if "democracy and human development are to be sustainable."

In a sobering paper on the human right to food, Windsor Law **Professor Sukanya Pillay '90** examined why hunger – the "silent genocide" that kills 24,000 people every day – still exists in a world which produces enough food for twice its population. As Professor Pillay explained, when developed countries provide subsidies to corporate farms, the huge food surpluses exported to other markets render local farmers unable to compete. These trade-distorting subsidies have led, for example, to the displacement of 15 million Mexican maize farmers, and (since 1997) to the suicide of 25,000 farmers in India. In light of the ever-widening gap between rich and poor farmers, Professor Pillay said it is crucial for human rights to be mainstreamed into globalization.

One of the conference's more controversial papers was delivered by Rhoda Howard-Hassmann, a world-renowned scholar on human rights in Africa, who questioned whether dual transition can support economic rights at all. Defending Ghana's transition from a socialist to a market economy in the early 1980s, she suggested that economic growth is a prerequisite for economic rights, and that we must "figure out how [developing] countries can create their own wealth". While acknowledging Ghana still faces many problems, Professor Howard-Hassmann argued the country's economic transition has produced many benefits, including a multi-party system, a freer judiciary, a freer press, a freer civil society and a more stable legal system.

Windsor Law Professor and Director of the Centre for Law in Aid of Development, **Dr. Paul Ocheje**, wrapped up the conference with a paper calling for civil and political rights to be treated with the same urgency as economic development. As scarce development resources are being siphoned by a "new breed of thieves that steals money in the billions", Dr. Ocheje said it is time to re-examine the state-centred approach to international law, and hinted that a "supranational" law might be the best way to deal with the poverty and corruption.

Dr. Clarence Dias, President, United Nations International Center for Law in Development

Dr. Paul Ocheje, Director of Windsor's Centre for Law in Aid of Development

Professor James Paul (Rutgers University)

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