

# windsor law now

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## celebration of aboriginals in the law

recalling the past – discussing the future

In speaking about his personal journey – from life on the reservation, to his law school experience, his activism in the Aboriginal rights movement, and, finally, his appointment to the Court of Appeal for Ontario, one theme remained constant for **Justice Harry S. LaForme** – always be true to yourself and your ancestry. In his words:

“... it is vitally important for Aboriginal lawyers to recall their past. We must never forget what we endured so that we can talk about the future, so that we can continue with our healing, so that we can continue the re-evaluation of ourselves, so that we can celebrate our being and know who we are.”

Justice LaForme's keynote address was the highlight of Windsor Law's *Celebration of Aboriginals in the Law* held on March 15, 2007. This event showcased the evolution of Aboriginal lawyering in Canada and, also, featured presentations by **Beverley Jacobs '94**, President of the Native Women's Association of Canada, **Jason Maddon**, the Métis National Council, and **Marisha Roman**, Aboriginal Initiatives Counsel, Law Society of Upper Canada.

Justice LaForme was an obvious choice to deliver the keynote address. He was the first

Aboriginal person to be appointed to a Superior Court in Canada in 1994 and, in 2004, he became the first Aboriginal person to be appointed to any Court of Appeal in Canada. Justice LaForme is quite likely the first Aboriginal person to be appointed to any appellate level court in any nation in the Commonwealth. To celebrate his many professional successes, Windsor Law has created the **Justice Harry S. LaForme Entrance Bursary for Aboriginal Law Students** which will be awarded to all Aboriginal students entering Law I upon the successful completion of the Native Law Program at the University of Saskatchewan.

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environmentally  
speaking on page 6



Justice Harry S. LaForme  
Ontario Court of Appeal



Marisha Roman  
Aboriginal Initiatives Counsel



Beverley Jacobs '94  
Native Women's Association of Canada

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## something to talk about

no shortage of guest speakers at windsor law

Windsor Law was the destination of choice for nearly twenty guest speakers this past academic year. The Speakers Committee of the Students' Law Society, with the support of Dean Bruce Elman, achieved unprecedented success in organizing lectures and panel discussions on a wide variety of issues important to law students.

In addition to a visit by the Chief Justice of Canada, the **Right Honourable Beverley McLachlin, P.C.**, Windsor law students had plenty of opportunity to get up close and personal with some familiar names.

The **Honourable Frank Iacobucci**, former Justice of the Supreme Court of Canada, shared his thoughts on the recent settlement by the Government of Canada with respect to Indian Residential Schools. Justice Iacobucci was the government's representative in this settlement, which was recently given court approval.

**Richard W. Pound**, Chairman of the World Anti-Doping Agency and a member of the International Olympic Committee, made remarks about his extensive involvement in both bodies. Mr. Pound, recently named one of Time Magazine's 100

Most Influential People in the World, received an honorary Doctor of Laws degree from the University of Windsor in 1997.

Students were also treated to lectures delivered by the likes of **Justice Konrad von Finckenstein** of the Federal Court of Canada, **Howard Wetston**, Chair of the Ontario Energy Board, and the Treasurer of the Law Society of Upper Canada, **Gavin MacKenzie**.

Windsor Law alumni played a major role in the success of the Speakers Committee, as the **Windsor Law Alumni Fund for the Enhancement of Student Life** was a valuable source of funding for the Committee. Further, returning to their *alma mater* to speak to students were **Windsor Mayor Eddie Francis '02**, **Lorne Abony '94**, C.E.O. of Fun Technologies, incoming Ontario Bar Association President **Gregory Goulin** and **Cynthia Heinz**, of Fasken Martineau DuMoulin LLP in Toronto.

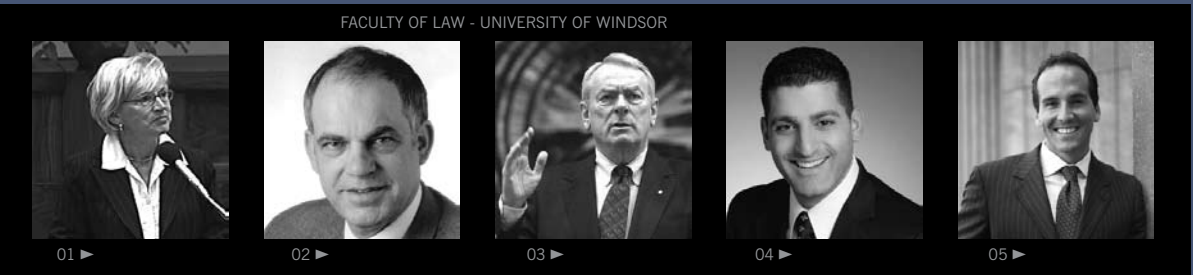
This impressive lineup of speakers provided stimulating and thoughtful analysis of a number of important issues. The members of the Speakers Committee should be congratulated for their hard work and dedication. Well done!



Members of the Speakers Committee pose with former Justice Frank Iacobucci, from left to right:

- Rahim Punjani – Law 3
- Zahra Binbrek – Law 2
- TESSIE KALOGERAS – Law 3
- The Honourable Frank Iacobucci
- Ian Matthews (Chair) – Law 3
- Jenine Mak – Law 3
- Eddie Lynde – Law 3
- Daniel Coultis – Law 2
- Absent – Brian Pipe – Law 1

Recent speakers: Chief Justice Beverley McLachlin, Justice Konrad von Finckenstein, Richard Pound, Mayor Eddie Francis '02 and Lorne Abony '94.



## beresh delivers cohn memorial lecture



Brian Beresh, Q.C. addresses Windsor Law on his most recent murder defence case.

This year's **Bernard Cohn Memorial Lecture** was delivered by **Brian Beresh, Q.C.** of *Beresh Cunningham Aloneissi O'Neill Hurley Barristers* of Edmonton, Alberta. Mr. Beresh spoke about his defence in the case of *The Queen v. Sheridan*. In this case, Mr. Beresh was presented with the opportunity of advancing multiple defences to murder. This would, on first blush, appear to be a Defence Counsel's dream, but, in fact, it could be their worst nightmare.

The **Bernard Cohn Memorial Lecture** is an annual event at the Faculty of Law and features an analysis by a prominent criminal defence lawyer of one of his or her most memorable and important cases. From the analysis, general principles of criminal law and criminal advocacy are exposed and examined. The Lecture Series is named after the legendary Windsor lawyer Bernard Cohn, Q. C. whose remarkable legal career spanned 52 years. All of the previous lectures are captured in

the book *Counsel for the Defence: the Bernard Cohn Memorial Lectures in Criminal Law* (Irwin Law 2005), edited by **Edward Greenspan**.

Mr. Beresh is a well known barrister in Western Canada having appeared as counsel on the *Milgaard* Reference before the Supreme Court of Canada in 1994 and as counsel in the *Nerland* Inquiry in Prince Albert, Saskatchewan.

Mr. Beresh is an instructor at the University of Alberta, Faculty of Law, teaching courses in Criminal Trial Procedure and Advocacy and Defending the Mentally Ill. He is a Bencher of the Law Society of Alberta.

Mr. Beresh's lecture was preceded by a short description of the life of Bernard Cohn by his friend and colleague **Justice Saul Nosanchuk**. The lecture is made possible by an endowment funded by the trustees: **Edward Greenspan, Q.C.**, **Harvey Strosberg, Q.C.**, **the Honourable Saul Nosanchuk**, **the Honourable Carl Zalev**, and **David Cohn**.

## chief justice mclachlin captivates audience



Chief Justice Beverley McLachlin, P.C., with Students' Law Society executives Matt Napier, left, and Graham MacLeod, right.

On any given day, the foyer of the law school is usually peppered with law students entering and exiting class rooms or on their way to check grades posted up on the cork boards. However, at around 4:30 p.m. on Wednesday, January 10, 2007, the foyer of the **Ron W. Ianni Law Building** was filled with over 350 law students eagerly awaiting the arrival of one very special guest – the **Right Honourable Chief Justice of Canada, Beverley McLachlin, P.C.**

By invitation from the Speakers Committee of the Students' Law Society, the Chief Justice made her visit to Windsor Law to speak about "The Importance of the Independence of the Bar in the Canadian Justice System." Her lecture revolved around the need for an impartial bar, free from outside economic, social, or political influence. The Chief Justice's talk about the potential for corruption and violence, as seen and documented in other countries, fell on a captive audience, many, if not all, of whom had been privy to similar discussions in their respective first year Access to Justice classes.

It is not every year that Windsor Law can pride itself in hosting the Chief Justice of the Supreme Court of Canada. For many students, coming to hear the Chief Justice speak was an opportunity of a lifetime. After the conclusion of her lecture, Chief Justice McLachlin took questions from the audience, ranging from inquiries about her early experiences as a member of the Bar and the British Columbia judiciary to questions regarding the challenges she faced and continues to face as the first female Chief Justice of Canada.

Chief Justice Beverley McLachlin is the 17th Chief Justice of the Supreme Court of Canada and is the first woman in Canadian history to sit as Chief Justice. She hails from Pincher Creek, Alberta. She obtained her law degree from the University of Alberta. Chief Justice McLachlin went on to pursue a legal career in British Columbia, first in private practice and later, as a professor at the University of British Columbia. She served on every level of court before her appointment as Chief Justice and is considered by some to be the "Wayne Gretzky" of the legal profession in Canada.

## herb gray distinguished lecture: mclellan on post 9/11 borders

The Faculty of Law was pleased to host this year's **Herb Gray Distinguished Lecture** which was delivered by the **Honourable A. Anne McLellan, P.C.**, Distinguished Scholar in Residence at the Institute for United States Policy Studies, University of Alberta. Professor McLellan served as the Deputy Prime Minister and the first Minister of Public Safety and Emergency Preparedness from the December 2003 to January 2006.

In her lecture, entitled "The Border After 9/11: How Big a Barrier to Trade?" Professor McLellan advocated greater integration among Canada, the United States, and Mexico in order to lessen border difficulties.

"We have to start thinking about what it means to be part of North America," she suggested.

She went on to note that recent initiatives were creating a perception that the border was

becoming more of a barrier. She pointed out that American measures such as identification cards for individuals entering the United States, user fees for Canadian air travellers, and commercial shipping fees were helping create an impression that the border was a barrier for people who live both in Canada and the United States. She noted that the goal was to "enhance security while facilitating trade" and that these measures would not assist in attaining that goal.

This lecture was the 3rd in the **Herb Gray Distinguished Lecture Series**. The lectures focus on Canada's place in the world and on those issues which define "being Canadian". The series marks the university's recognition to Mr. Gray's contributions to the City of Windsor, Province of Ontario, and Canada. Previous Gray Lecturers were **Dr. Lloyd Axworthy** (2004) and **Ambassador Allan Rock Q.C.** (2005).

The **Right Honourable Herb Gray, P.C., C.C., Q.C., LL.D.** was in attendance and expressed his pleasure at Professor McLellan's agreeing to deliver the 2006 lecture. Mr. Gray was born in Windsor in 1931. He was elected 13 consecutive times to the House of Commons and served for almost 40 years. He was appointed a Minister of the Crown in 1969 and became the first Canadian Jew to serve in a Federal Cabinet. Mr. Gray is currently the full-time Chair of the Canadian section of the International Joint Commission – an autonomous international organization dealing with transborder issues of water and air.



The Honourable A. Anne McLellan, P.C., lectures on border integration and facilitating trade post 9/11.



# windsor law in collaboration

highlighting windsor law's co-operative ventures

## new exchange with brandeis school of law

**Dean Bruce Elman** recently inaugurated a new, although as yet informal, Exchange Program with the **Louis D. Brandeis School of Law at the University of Louisville**.

During his visit to the Brandeis School of Law, Dean Elman delivered both a public lecture and a faculty seminar on "Hate Speech: The Canadian Approach". In his public lecture, Dean Elman discussed the general state of the law on freedom of expression in Canada. He utilized the example of hate speech to provide an illustration of how the Canadian law on freedom of expression had developed. Dean Elman's faculty seminar was more directly focused on hate speech.

"I was very pleased with the discussion. There were a number of First Amendment scholars present and they were very open to thinking about the Canadian approach to hate speech as an alternative to the more absolutist view of free speech which they have in the United States," Dean Elman noted.

While at Louisville, Dean Elman had discussions with **Dean Jim Chen** and **Professors Russell Weaver** and **Tony Arnold** regarding formalizing and extending the Exchange Program.

"We are beginning with short-term, one week professorial exchanges, but I would like to see us extend the program to include jointly offered courses that would bring the students of our two schools together electronically and in person, as well as through individual student exchanges," Dean Elman stated.

**Professor John Cross** of the Louisville faculty will pay a reciprocal visit to Windsor in October. Professor Cross specializes in Intellectual Property and Native American Law.

"We are very happy that Professor Cross will be visiting with us in the Fall semester," said Dean Elman.



LtoR: Professor John Cross and Professor Russell Weaver from the University of Louisville meet with Dean Bruce Elman.

## new zealand symposium and tour

How many times have you said to yourself that one day you would love to visit New Zealand? Now Windsor Law has teamed together with the University of Auckland and Pacesetter Travel to make that dream come true. Read on!

On November 16, 2007 over twenty world-renown experts in the area of the law of remedies will gather in Auckland, New Zealand to engage in a lively symposium on remedies issues in the main Common Law jurisdictions of the Commonwealth. The conference is designed to find the common bonds in domestic law among Canada, Australia, New Zealand, the United Kingdom, and the United States. The symposium should appeal to lawyers, judges, academics and other policy makers, who wish to delve more deeply into how remedial issues shape rights, and to those desiring to understand what issues will shape future developments in the law of remedies across the globe.

The one-day conference is the first ever joint undertaking between the faculties of law at the University of Windsor and the University of Auckland, and is being sponsored through

matching grants from the Law Foundation of Ontario and the New Zealand Law Foundation.

Another first, following the symposium, is a fourteen day alumni tour of New Zealand. **Dean Bruce Elman** and his wife Nancy, and former dean **Jeff Berryman** and his wife Carol, will lead a tour through the splendid scenery of clean and green New Zealand. Designed around a November 12th departure, returning fourteen days later, the tour will take in the highlights of New Zealand in a leisurely and semi-independent pace giving ample opportunity to experience the country. We have negotiated a very competitive cost for all travel and accommodation, including some meals.

If a chance to enjoy remarkable wines and gourmet food, play golf, hike, bungee jump, swim in natural thermal pools, or other recreational pursuits, thrown together with good company, and an educational and cultural experience appeals, then make sure to visit:

[www.uwindsor.ca/law/remedies](http://www.uwindsor.ca/law/remedies) and check out details for the first ever University of Windsor Alumni and Friends Tour.

UNIVERSITY of LOUISVILLE

THE UNIVERSITY OF AUCKLAND

uOttawa

WAYNE STATE UNIVERSITY

## videoconferencing – the best of both worlds

Law students at the University of Windsor and the University of Ottawa are getting a taste of each other's professoriate through an innovative curriculum-sharing program, which uses videoconferencing technology to bridge the 900-kilometre distance between the two schools.

Windsor law students take a course in communication law via videoconferencing, and in exchange, Ottawa students learn about class action lawsuits from Windsor's renowned litigator and adjunct professor, **Harvey Strosberg DCL '03**.

"I find it very invigorating and challenging that we're doing it this way," said Strosberg. "In specialized areas, it's very useful and very efficient."

While Strosberg or his teaching partner **David Robins '97** lecture in the University of Windsor's Ron W. Ianni Faculty of Law building, the session is recorded and beamed in real-time via broadband private network Internet connection to students in a classroom at the University of Ottawa. Students in Ottawa can participate in real-time discussion and ask questions, and lecturers have the ability to deliver multimedia presentations, such as PowerPoint slide shows or movies in DVD format.

"I've been very impressed by it all," said Graham MacLeod, a third-year law student and president of the University of Windsor's Students' Law

Society. MacLeod, who was on a waiting list for the course, said the Faculty of Law is fortunate to have an effective technical group to support the program. "And we're very fortunate to have

**"I find it very invigorating and challenging to teach this way."**

**Harvey Strosberg DCL '03**



Professors Strosberg and Robins."

Strosberg is best known for his involvement in the 1999 \$1.5 billion class action lawsuit against the federal and provincial governments in the wake of the Canadian Red Cross tainted blood scandal, in which some 60,000 people were infected with Hepatitis C. He is a senior partner at Sutts, Strosberg, LLP and has extensive trial and appellate experience in the areas of negligence, personal injury, product liability, insurance law, commercial disputes and class action. Strosberg received an Honorary Doctor of Civil Laws

from the University of Windsor in 2003. David Robins also practices law at Sutts, Strosberg.

Bruce Elman, Dean of Law, is an enthusiastic supporter of the program and said it enables law students to broaden their educational horizons. "Obviously it provides students with a wider curriculum, but it also makes for a cross-fertilization of ideas among students that wouldn't normally be possible," he added. "The great benefit of this arrangement is that students can learn from professors who are truly experts in their area."

## wayne/windsor forum revived

A number of years ago the law schools at Windsor and Wayne State University established an annual lecture series known as the **Wayne/Windsor Forum**. Each year, two professors, one from each institution, were asked to examine a given topic from a Canadian and American perspective. After a hiatus of many years, the forum was reinstituted during the Winter semester of 2007. The focus of this year's forum was, most appropriately, on environmental law issues.

**Professor Noah Hall**, of Wayne State University, whose research concentrates on issues of environmental governance, federalism and transboundary pollution, delivered a public lecture at Windsor Law, entitled, "Bilateral Breakdown: Going to Court over U.S./Canadian Pollution Disputes." Professor Hall noted that, even though Canada and the United States have one of the

strongest bilateral relationships in the world and a history of co-operation and diplomacy on environmental matters, there has been a number of recent failures to resolve U.S./Canadian pollution disputes. As a result, environmental advocates have had to look to domestic litigation in the U.S. courts to vindicate their rights.

**Windsor Law Professor Marcia Valiante** delivered the companion lecture at the Wayne State University Law School. Professor Valiante specializes in environmental law and conducts research in the areas of Canadian environmental law and policy, water rights, the Great Lakes and planning issues. Professor Valiante is active in the community on the clean-up of the Detroit River and is a member of the International Joint Commissions Great Lakes Science Advisory Board. Her presentation was entitled, "Acting

Locally: Protecting the Environment by Managing Sprawl." It addressed how sprawl, that is, development at the edge of cities that outpaces population growth, is an environmental issue that, among other things, affects water quality in the Great Lakes. The presentation also addressed some of the ways governments, particularly Ontario, are trying to contain these problems.

Choosing an environmental law topic to revitalize the Wayne/Windsor Forum was particularly appropriate since Professors Hall and Valiante worked together to create a course on Canada/U.S. Environmental Law. Students from both law schools met together for every class, about half the time in Windsor and half in Detroit, to study comparative environmental law in addition to some binational concerns such as the Great Lakes.



# Q&A

## faculty focus: marcia valiante

a perennial force for  
environmental change



### education:

BA & BSc,  
University of New Hampshire  
LLB, Osgoode Hall Law School,  
York University  
LLM, Queen's University

### teaching (2007-2008):

Environmental Law  
International Environmental Law  
Land Use Planning Law  
Municipal Law

### publications:

"Privatization and Environmental  
Governance," in Albert Breton, Giorgio  
Brosio, Silvana Dalmazzone and Giovanna

These days, the environment couldn't be a more intensely discussed topic: news reports, documentaries, and political rhetoric mix with scientific declarations to form what has created the dawning of a new era of social discourse and global awareness on these oft-seemingly daunting issues. So how do we digest all that is going on around us on this topic of truly epic proportions? And can we actually make a difference, individually?

Unlike many of us, **Marcia Valiante** did not simply wake up to the problems involving our environment recently; she has been interested in them all her life and has had a vibrant career, championing the causes that many are just now taking note of.

According to her, the impacts that we have both individually and collectively can all start with a lone blade of grass or a single decision about those not-so-little things we do every day.

**Michellyne Mancini** sat down with Professor Valiante recently to examine the environmental law expert's take on today's environmental issues.

### At what point in your life did you become interested in the environment?

I became interested in the environment as a teenager, really. As an undergrad I worked for an environmental organization while undertaking a science degree, and then I decided to go to law school in order to pursue a career in environment. So law, for me, was a means through which to have an environmental career.

### At that time, the environment wasn't nearly as well understood an issue in our society as it became in the late 1980's or as it is today. What made you become so interested?

You know, it was just really important to me. I was very concerned about these issues; they really resonated with me. I loved the outdoors, and I wanted to pursue something that mattered to me. I didn't want to just work for the sake of working;

Garrone, eds., (2007) **Responsibility and Environmental Governance** (Edward Elgar).

"The Role of Local Governments in Great Lakes Environmental Governance: A Canadian Perspective," (2007) 40:4 **University of Michigan Journal of Law Reform**.

"Interdependence and Coordination in the Canadian Environmental Policy Process," in Albert Breton, Giorgio Brosio, Silvana Dalmazzone and Giovanna Garrone, eds., (2007) **Environmental Governance and Decentralisation** (Edward Elgar).

"Controlling the Impacts of Urbanization on Water Resources: Laws, Policies and Institutions in Ontario", (2005) prepared for the International Joint Commission, Workgroup on Parties' Implementation

I wanted to work in a field where I thought I could contribute something.

### What in your opinion should be the top environmental priorities of Canada's government at this point?

Well, right at the moment, climate change, water quality, and smog. But, you know, it's not simply those things; it should also be urban planning and consumer culture. These are two of the fundamental things, for example, which create the underlying structures that cause our environmental problems. As far as planning is concerned, urban sprawl and a lack of good, widespread public transportation contribute heavily to the fact that so many of us have to get in our cars to get where we need to go. The government can have an impact on our habits by designing things in such a manner that our lifestyles will become more environmentally friendly.

### What should the government be doing to solve these problems?

There are a variety of solutions that can help solve the problems we face. Financial incentives can be a very good way of helping to nudge the habits of both the public and of large corporations. The incentives in place in our society to make money and to live a convenient lifestyle can't be completely at odds with the incentives to protect the environment. If the financial and environmental incentives were pointing in the same directions—which they can be—then we would probably have more progress. Tax shifting, for example, can be a good method for aligning our priorities.

### Do you ever get discouraged about the slow pace of change, or have there been moments in your career where you've thought, 'wow, things are getting better'?

We have made progress on some issues in our society. We've taken the lead out of our gasoline, for example. In Ontario, we've changed practically every law related to water in the years since the Walkerton tragedy of 2000. We have done some things which have worked well, but in many cases we have not addressed the fundamental causes of the problems. Furthermore, we do not always allot the resources needed to execute our strategies. For example, we have top drawer environmental laws in Ontario, but we are missing a great deal when it comes to implementation. This can be largely attributed to the fact that Environment Canada and Natural Resources Canada have had their budgets slashed over the years. Leadership in government is missing on this issue.

### Why do you think the pace of change is so slow?

Well, the pace of change is slow because it is often only once people start to see evidence of a problem in their own lives that they start to react. Many people in our society recognize the importance of environmental issues inherently; others among us tend to require more blatant

clues. It's only when our child develops asthma or a certain allergy, for example, that we might wonder about the pesticides we're putting on our lawn. Our reaction, in turn, spills out in to the media and gets some attention from politicians. So it can be cyclical. But the pace of change is definitely slow: Canada promised to stabilize its emissions in 1992. And yet now, with respect to the Kyoto Protocol and other initiatives, the Government and others are saying that we can't move so quickly—but it's been fifteen years and we have yet to do anything.

### You've been very involved with various environmental decision-making bodies; what have you learnt from a pragmatic perspective about the best way to make progress on these issues?

Making decisions at the local level is very important. One of the biggest examples of this is urbanization, which is a huge piece of the environmental puzzle. The way that a city develops significantly impacts the environment. Lot by lot, city by city—if you add up all those decisions, they make a huge difference.

### How do you think Ontario is doing in that regard?

We do well when we implement the good plans we've devised. We have some very good plans in some of our cities. The GTA has implemented a green belt of agricultural land that cannot be developed on. They have implemented a growth management strategy to contain sprawl, so these are good things, but not all cities actually implement the plans they have. It's also very important to have a thriving downtown; if the downtown is thriving, people will want to live and shop there and there will be less commuting to the suburbs. But for smaller towns, this can be difficult: if a big box store comes and offers you revenue to open up a store on the outskirts of the town, what are you going to do? Turning down that revenue is very difficult for a small municipality. It is only the very large municipalities that can afford to be more demanding with that kind of an investor, telling them where they can and cannot put a store. So that is what I mean when I say that our financial and environmental incentives have to be pointing in the same directions.

### What do you think is the key to making our society one that lives in a more environmentally friendly way?

Information. When people are more informed about the available alternatives, they make better decisions. People need to be aware so that they can make the necessary connections: for example, the chemicals someone may use on a lawn or the asphalt on a driveway—all of these things create run-off into the water we drink. But there are excellent, viable, convenient alternatives to these choices. People need to be aware of the impact of their individual decisions because countless such decisions are made every day, and they add up to create the environment we live in.

## eansor & lafrenière awarded grant



Professor Eansor, left, and Professor Lafrenière.

**Professor Donna Marie Eansor** (Faculty of Law) and **Professor Kathryn Lafrenière** (Department of Psychology) have been awarded a grant from the **Canadian Bar Law for the Future Fund (LFFF)** for a project entitled *The Mental Health of Women in the Legal Profession: Incidence, Causes and Consequences*. LFFF was established in 1984. Its goal is to provide financial assistance for objective, independent and thoughtful Canadian research projects that are of national interest or of benefit to the general public.

The purpose of the project is to examine features of the working lives of women in the legal profession, and to assess their impact on indicators of mental health. Women are exposed to different and more environmental stressors than men both

at work and at home. The legal profession might be a culture that generates higher risks and increased vulnerabilities to mental health problems for women.

This issue will be explored through a survey administered to a large, stratified, random sample of women lawyers including women in community settings and academic faculties. The survey is based on existing psychometrically sound measures of workplace characteristics and mental health outcomes. The sample aims to include women from diverse backgrounds, and participants will include women lawyers in the Western, Central, and Eastern Provinces.

A report will be prepared for the LFFF and the data will be available on the websites of both Professor Eansor and Professor Lafrenière. Congratulations!



## access to justice course breathes life into law school theme

What does the ideal of “Access to Justice” mean? What are the implications of a commitment to that ideal regarding the law in contemporary Canada? These are among the questions that have animated Access to Justice as an institutional theme of the faculty for over twenty-five years. In 2002, the Law School decided that Access to Justice should be highlighted in the curriculum by becoming a mandatory first year course.

The course explores various issues using the ideal of Access to Justice as the principal reference point. It discusses the relationship between Access to Justice and other ideas of central importance in law, including the rule of law, equality, human rights, and institutional arrangements. It critically analyzes the substance and process of law in the modern Canadian administrative state. It also examines the extent to which the legal profession has both promoted and hindered Access to Justice in various legal contexts. The ultimate objective is to provide a foundation for understanding and applying the ideal of Access to Justice throughout the curriculum and

during the course of our graduates’ diverse careers.

The course has been invaluabley enriched by the generous participation of leading members of the Canadian legal community. In recent years we have been fortunate to have distinguished individuals deliver lectures in the course. (See sidebar below.) Members of the teaching team, in various years, have included: **Professors Reem Bahdi, Bill Bogart, Amanda Burgess, Aaron Dhir, Donna Eansor, Mark Hecht, Jasminka Kalajdzic, Ruth Kuras, Paul Ocheje, Gemma Smyth, John Weir, and David Wiseman**, who was responsible for much of the course’s foundational work. Administrative support is provided by **Mary Mitchell**.

The course is divided into three main parts. Part I, “Foundations”, invites overarching discussion of Access to Justice and its ramifications. It provides critical analysis on “What is Access to Justice?”, the rule of law and the impact of law in achieving justice are also discussed.

Part II, “Courts and Access to Justice”, considers the process and methodology of judicial decision-

making from the perspective of Access to Justice. Courts have long played an important role in the legal organization and regulation of Canadian society. The course takes a step back and seeks to understand and assess the general decision-making process of courts and the methodology of judicial reasoning. In so doing, it seeks to identify the ways in which that process and methodology can advance or hinder realization of access to justice.

In the winter semester, the course moves to Part III, “Legislatures, Administrative Bodies and Access to Justice”. Legislatures are a fundamentally important source of law, and as such the processes and values of statute-making are analyzed. Administrative bodies, including government departments and arm’s-length regulatory agencies, are creatures of legislation. The modern administrative state represents a defining characteristic of contemporary Canadian society. Over time, the administrative state has put in place an impressive array of institutions and programs, (such as medicare, social assistance,

and public education), that have contributed to realizing such ideals as equality, social justice, and good public goods. At the same time, however, sexism, racism, poverty, and many other forms of discrimination and disadvantage persist in Canada and, consequently, our societal ideals remain only partially realized.

The course is open-ended and has at its core a series of questions. The course does not purport to give “answers” to the many issues that are raised throughout the year. It introduces concepts that are addressed further in other courses and by our graduates throughout their careers. Students are exposed to various conditions in Canadian society that implicate Access to Justice. They are then asked questions about the law’s role in promoting Access to Justice in Canadian society. Answers can be difficult, complicated, and subject to much

debate. At the same time, though, the course in Access to Justice urges that these questions be faced.

The course is team taught. It is delivered through a series of large group lectures which includes the entire class. There are also small group meetings which include about twenty-five students each and are led by a member of the teaching team. The small groups provide an opportunity for in-depth discussion and for undertaking a variety of assignments and presentations, including a major project involving an Access to Justice audit of recent legislation. The audit project allows the student to further explore various parts of the course.

The faculty is very grateful for the generous support of the **Law Foundation of Ontario** and the **Windsor Law Alumni Fund for the Enhancement of Student Life** in underwriting the Access to Justice course.

## conklin & etherington receive recognition awards



Professor Brian Etherington

**Acting Vice President, Research, Dr. Nihar Biswas** presented 2006 Faculty Recognition Awards to **Dr. Bill Conklin** and **Professor Brian Etherington** at the *Celebration of Research and Scholarship Excellence*.

**Dr. William Conklin**, an internationally recognized legal theorist, is being recognized for his editorship of the *Windsor Yearbook of Access to Justice*. The *Yearbook* was recognized as one of the top 10 human rights law reviews in North America, together with the *Columbia Human Rights Law Review*, the *Harvard Human Rights Journal*, and the *Yale Human Rights and Development Law Journal*. The *Windsor Yearbook* is the only non-American law review to appear in ExpressO’s 2006 ranking of 85 top law reviews, divided into nine subject-specific categories. ExpressO is a service of Berkeley Electronic Press. According to ExpressO’s Manager Chris Laughrun, “the *Windsor Yearbook of Access to Justice* enjoys high standing among our community of thousands of legal scholars”.

**Professor Brian Etherington**, one of Canada’s leading scholars on Labour Law and Labour Arbitration, co-authored *Labour Arbitration in Canada*, with Mort Mitchnick, a prominent labour relations lawyer and former arbitrator. The material is drawn from the authors’ popular service, *Leading Cases in Labour Arbitration*. The book is an authoritative resource for all labour relations practitioners and features Canada-wide coverage of more than 150 topics.

**Professor Jeffrey Berryman** was also recognized as the *University of Windsor Leadership Chair in Law*. The University of Windsor spotlights accomplishments and achievements of faculty at an annual event held to pay tribute to those who have received significant awards and honours for their research or creative activity.

The recipients of the awards are presented with a plaque at the *Celebration of Research and Scholarship Excellence* event. Congratulations!

## distinguished guest lecturers in the access to justice course

### Justice Douglas Campbell “Social Context and Judging”

Justice Campbell, of the Federal Court, is recognized internationally as a leader in judicial education and as someone with deep dedication and experience regarding equality and the law.

### Dr. Julie Macfarlane “ADR and Courts”

Professor Macfarlane is a faculty member, one of Canada’s leading ADR academics, and a prize winning public policy consultant.

### Phyllis Gordon “Disabilities and Human Rights”

Ms. Gordon has held several positions as a public interest lawyer and is the Executive Director of ARCH, Disability Law Centre.

**Diane Labelle**  
“**The Administrative State and Smart Regulation**”  
A former Assistant Clerk of the Privy Council and prize winning civil servant, Ms. Labelle is Senior Counsel with Health Canada Legal Services.

### Chief Justice Allan Lutfy “Discretion, Human Rights, and National Security”

After a distinguished practice as a litigator, including serving as counsel before the *McDonald Commission* and the *Dubin Commission*, Allan Lutfy now serves as Chief Justice of the Federal Court of Canada.

### Cynthia Peterson “Self-Regulation, the LSUC, and Equity/Equality”

A distinguished human rights lawyer, partner in Sack, Goldblatt, Mitchell, and counsel in a number of groundbreaking *Charter* cases, Ms. Peterson also acts as the Discrimination and Harassment Counsel for the Law Society of Upper Canada.

### Allan Rock “International Human Rights and the Administrative State”

After an extraordinary career as a litigator and as Treasurer, Law Society of Upper Canada, Allan Rock was a cabinet minister (Minister of Justice and several other portfolios) and then Canadian Ambassador to the United Nations.

### David Tanovich and Rose Voyvodic “Self-Regulation, Lawyers, and Role Morality”

Both faculty members, Professors Tanovich and Voyvodic lectured on the legal implications of Professor Tanovich’s prize-winning essay, “Law’s Ambition and the Reconstruction of Role Morality in Canada”.

### Jean Teillet “Litigation and Social Change”

Renowned Aboriginal lawyer and advocate for Métis rights, Ms. Teillet appeared as counsel before the Supreme Court of Canada in *R.v. Powley*, a groundbreaking decision for Métis rights, and has been the recipient of many awards and distinctions.

### Faisal Kutty “Discretion, Human Rights, and National Security”

Mr. Kutty, partner in Kutty, Syed & Mohamed, is a board member of several organizations including the Canadian Council on American Islamic Relations and serves as General Counsel for the Canadian-Muslim Civil Liberties Association.



Professor Reem Bahdi, Professor Bill Bogart, and Gemma Smyth, Director of Mediation Services have all played key roles in the success of the Access to Justice course.



Faisal Kutty, bottom, and Chief Justice Allan Lutfy, far right, enage Windsor Law students and faculty in debate. These personal interactions and one-on-one conversations are one of the key principles in the structure of the Access to Justice course.



# faculty opinion: richard moon

then and now – the *charter* at 25



Richard Moon, B.A., LL.B., B.C.L. (Oxon), conducts research in the areas of freedom of expression, freedom of conscience and religion, and the structural aspects of constitutional rights protection. His current research project, “The Secularization of Religious Freedom”, is funded by a general grant from the Social Sciences and Humanities Research Council of Canada.

The *Canadian Charter of Rights and Freedoms* recently turned 25. We asked constitutional law expert **Richard Moon** to comment briefly on past and recent debate about the *Charter*.

The *Charter* has two functions. First, it is a symbolic statement of basic public values – the fundamental rights of citizens. The second function, which is not entirely congruent with the first, is to provide a process for the protection of those fundamental rights.

The *Charter* gives the courts the power to review government actions, including federal and provincial laws, to ensure they are consistent with fundamental political rights. Important individual or minority rights and interests are sometimes ignored or overridden in the give-and-take of majoritarian, preference based politics. *Charter* review offers recourse to those who believe their rights have been compromised by government action.

This second function is controversial. Unelected judges have the power to strike down laws enacted by democratic institutions. And while we may all agree that freedom of expression, for example, is an important right that should be protected, we may have very different views about what it means in practice, about the kinds of activities it protects and the proper limits to its exercise. The interpretation or application of abstract moral/political rights, and the evaluation of limits on these rights, will inevitably engage the decision-makers’ values.

When the *Charter* was being debated in the early 1980s, its most vocal critics were left-leaning

politicians and academics. In their view, unelected judges should not have been given the power to strike down democratically enacted laws. They worried that important political issues would be narrowly framed as legal matters – and as such would become the domain of lawyers and judges, and they pointed out that access to the courts was something that only the wealthy could afford. They noted also that the *Charter* focused exclusively on government action: the government was viewed as a threat to individual liberty, without any recognition of its role in regulating corporate or private power. Additionally, the critics believed judges and lawyers to be generally conservative in their outlook, and they were concerned that the courts would strike down progressive legislation.

The inclusion of s.33, the “notwithstanding clause”, was a response to these concerns. As most readers will know, s.33 allows a government, provincial or federal, to declare that a law will apply notwithstanding certain key provisions of the *Charter*. Certainly the inclusion of s.33 blunted some of the concerns about judicial review.

While the courts have not been particularly conservative in their judgments, the structure of constitutional adjudication has meant that the rights and freedoms in the *Charter* have been interpreted narrowly and negatively as limits on government action. If expression is a valuable activity, then perhaps the right to freedom of expression should be concerned not only with direct acts of government censorship but also with the real opportunities individuals have to

express themselves – with the distribution of communicative resources. If we are committed to equality, then perhaps we should be concerned about economic inequality in our society. But for both structural and political reasons, the courts are not well-positioned to engage in significant economic redistribution.

Today, the most vocal criticism comes from socially conservative academics and politicians, including our current Prime Minister, and is directed at the courts rather than the *Charter*. The courts are accused of being activist. This claim can be understood in several ways. First, a court may be described as activist when it strikes down laws enacted by a democratically elected government. Indeed, supporters and critics of the Supreme Court have often argued the ‘activism’ issue by counting the cases in which the court has struck down or upheld a law.

But the critics’ claim cannot simply be that – that the court is improperly activist when it strikes down a law; for the courts have a clear mandate under the 1982 Constitution to review legislation. Therefore, if the critics believe that it is wrong for the courts to strike down laws, then their criticism should be directed at the *Charter* rather than at the courts. But, of course, these critics are aware that the *Charter* has significant support among Canadians, and so they may be reluctant to attack the *Charter* directly. If their argument were that unelected officials should not be striking down laws, then it may have some merit.

Formally the complaint about activism is not about the *Charter*, but is instead about how the courts have interpreted or applied its rights. It is complained that the courts have gone beyond the words of the *Charter* and ‘read in’ certain things that are not in the text, that they have stuck down laws on the basis of the judges’ own preferences or values, or that, as our Prime Minister has said, they have pursued their own social agenda.

Specifically, the critics point to the inclusion of sexual orientation as a prohibited ground of discrimination under s.15, the equality provision, when no such words appear in the section. The weakness of this criticism is obvious. The rights in the *Charter* are stated in abstract terms; the court has to elaborate on their meaning or content.

There is no value-neutral way to interpret these rights. It is true that s.15 says nothing about discrimination on the basis of sexual orientation. It lists several grounds of discrimination, and sexual orientation is not on the list. But the way in which

s.15 is written, the ‘enumerated’ grounds of discrimination are not exhaustive. Section 15 is a general ban on discrimination; the court must decide if there are other forms of differential treatment that breach s.15. Indeed, if the courts were to treat the enumerated grounds in s.15 as exhaustive, they might be accused of ignoring the text of the *Charter*.

Stephen Harper, before re-entering politics a few years ago, headed a conservative lobby group, the National Citizens Coalition. In that capacity, he challenged federal statutory limits on election spending by third parties (groups or individuals who were not themselves running for elected office). This restriction was part of the larger scheme of spending limits on parties and candidates during a federal election campaign. Mr Harper, in a case that carries his name, argued that the spending limits breached s.2(b) of the *Charter*, the freedom of expression right. Yet s. 2(b) says nothing about the spending of money or election campaigns. Mr. Harper was asking the courts, in the language of the critics of activism, to read that into s.2(b). The Supreme Court of Canada, quite reasonably, interpreted the right to freedom of expression as protecting the right to spend money during an election campaign – to buy advertising space or time. This interpretation of s.2(b), however, was no less activist, no more tied to the text of the *Charter*, than the courts’ determination that s.15 prohibited discrimination on the basis of sexual orientation. In the end, the Supreme Court held that this statutory limit on expression was justified under s.1 of the *Charter*.

Perhaps the complaint of Mr. Harper and others is with the *Charter* itself. For a variety of reasons they don’t want to discard the *Charter* entirely; instead, they argue that the courts should be restrained – that the courts should define the scope of the rights narrowly and should be more deferential when assessing limits under s.1. Exactly how restrained or deferential the courts should be is not clear.

Or perhaps, more cynically, their complaint is simply with particular decisions – decisions with which they disagree – and which, on that basis, they label activist.



## Windsor Alumni and Friends Tour New Zealand

We are proud to announce the first ever Law Alumni and Friends tour to immediately follow the Second International Remedies Symposium in New Zealand on November 16th, 2007. Former dean Jeff Berryman hails from New Zealand and will lead the tour, together with his wife Carol McDermott ’84, Dean Bruce Elman and his wife Nancy. Leaving Toronto on November 12th, the tour will last fourteen days. The tour blends a number of elements:

- **RECREATIONAL** – Golf on some of New Zealand’s most picturesque courses. There will be plenty of opportunities to do walking hikes through idyllic scenery.
- **CULTURAL** – Discover what it means to be in the largest Polynesian city in the world and experience the unique customs of New Zealand’s indigenous people, Te Maori.
- **EDUCATIONAL** – In addition to the Second International Remedies Symposium we have created a number of evening after-dinner lectures to discuss some legal (Constitutionalization of health care), some political (proportional representation), and some general knowledge topics (the settling of the Pacific).
- **GASTRONOMICAL** – Taste some of the finest and freshest produce before it gets exported.
- **OENOLOGICAL** – Yes, oenophiles will weep when they taste what New Zealand’s boutique wineries have to offer.
- **ECONOMICAL** – We have secured a great rate on Air New Zealand, and have chosen hotels for their comfort, character, and proximity to the most scenic sites of New Zealand.
- **SEMI-INDEPENDENT** – The last thing most people want on a vacation is to be constantly on the road travelling. We have taken the hassle out of planning a truly remarkable experience in New Zealand.

For more details on this vacation of a lifetime, visit: [www.uwindsor.ca/law/remedies](http://www.uwindsor.ca/law/remedies) or the Faculty of Law homepage and click on Alumni Tour and Friends.



## mark your calendar, ’77s & ’82s

Please join us for Reunion Weekend in Windsor celebrating the classes of 1977 and 1982. The events will take place from Friday, September 28 to Sunday, September 30, 2007. For more information contact:

### CLASS OF 1977 REUNION:

Peter Lillico ’77 at 705-743-3577 ext. 201,  
or plillico@lbkglaw.com or  
online: [www.windsorreunion77.ca](http://www.windsorreunion77.ca)

### CLASS OF 1982 REUNION:

Peter Hrastovec ’82 at 519-966-1300  
or phrastovec@raphaelpartners.com

Peter Kryworuk ’82 at 519-640-6317  
or pkryworuk@lerners.ca

Kevin Ross ’82 at 519-640-6315 or  
[kross@lerners.ca](mailto:kross@lerners.ca)



## celebration cont'd

Beverley Jacobs spoke passionately about the role of women in the Aboriginal rights movement and the need for a greater understanding of issues unique to Aboriginal women. As President of the Native Women's Association of Canada, she works tirelessly to advance the cause of Aboriginal women nationally. She recalled the time she had recently spent in Vancouver at the opening of the Pickton trial assisting the families of murdered women, many of whom were Aboriginal. Ms. Jacobs called on those present to use their voice, to get involved, to seek out an understanding of the issues facing native women, and to be part of the advancement of the rights of native women nationally.

Jason Maddon, on behalf of the Métis National Council, spoke of the great strides being made in Métis law and predicted that 2007 would be a seminal year as courts across the country interpret the principles outlined in the *Powley* case relating to the rights of Métis people.

Demonstrating the commitment of the Law Society of Upper Canada, Marisha Roman outlined her role in assisting Aboriginal law students seeking entry into the profession. As Aboriginal Initiatives Counsel, Ms. Roman works with Aboriginal law students and lawyers to ensure their full integration into the profession. This is accomplished through mentoring programs, career development assistance and by incorporating and celebrating Aboriginal heritage. The chair for the event was **Professor Len Rotman**, an internationally recognized scholar in Aboriginal law.

Justice LaForme, in his closing remarks, challenged the audience:

"I ask also that, as you go forward, you take your life's experiences, your traditions, beliefs and values with you because they matter greatly and they are always worth celebrating. And, always be mindful of how it feels to be marginalized and ignored. Remember how it felt

to have despair and to feel no hope. Remember how deafening the forced silence by another can be. Be a voice for your people and all people who hold justice in their hearts. Give a voice to the voiceless; hear the words of the quiet; and never allow another human being to be nothing more than background noise."

This event was one of three events relating to Aboriginal laws and lawyering in Canada hosted by the Faculty of Law this academic year. On February 12, 2007, **Justice Murray Sinclair**, the Associate Chief Justice of the Provincial Court of Manitoba spoke on "Aboriginal Legal Issues the Courts are Going to Have to Decide Someday" and on March 19, 2007, the **Honourable Frank Iacobucci** (formerly of the Supreme Court of Canada) spoke on "Indian Residential Schools".

**"Never allow another human being to be nothing more than background noise."**  
**Justice Harry S. LaForme**



Justice LaForme delivers his keynote address.



Law students gather for the event.

## windsor law now

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