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.

Continued on the back cover.
chancellor mcLachlin captivates audience

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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.

“At the time, we had 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 Canadians as travelers, and commercial shipping fees were helping create an impression that the border was a barrier for people who live both in the United States and Canada. She noted that the goal was to “enhance security while facilitating trade,” and that those measures would not amount to 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 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 AmbroseGuest (2004).

The Right Honourable Herb Gray, P.C., C.C., Q.C., LL.D. was in attendance and expressed his pleasure at Professor McLellan’s engaging to deliver the 2006 lecture. Mr. Gray was born in Windsor in 1931. He was elected 3 consecutive times to the House of Commons and served for almost all of his 30 years in the House of Commons in 1969 and became the first Canadian 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.

grey herb distinguished lecture: mcLellan on post 9/11 borders

something to talk about

no shortage of guest speakers at windsor law

Chief Justice Beverley McLachlin, P.C., with Students’ Law Society executives Matt Npel, left, and Shannon MacLeod, right.

Chief Justice McLachlin captivates audience

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**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 up together with the University of Auckland and Pacemont Travel to make that dream come true. Read on!

On November 16, 2003 over twenty world-renowned experts in the area of the law of remedies from both law schools met together for an educational and cultural experience. 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 one another to understand what issues will shape future developments in the law of remedies across the globe.

The one-day conference is the first 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 John Beamson and his wife Carol, will lead a tour through the scenic splendor 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 full 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.windser.dea.ca/lemedios and check out details for the first ever University of Windsor Alumni and Friends Tour.

new exchange with brandeis school of law

While at Louisville, Dean Elman had discussions with Dean Jim Chan and Professors Russell Weaver and Tony Arnold regarding formulating 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.

**Wayne/windsor forum revived**

A number of years ago the law school 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 delivered the opening address on issues of environmental governance, federalism and transboundary pollution, delivered a public lecture at Windsor Law entitled, “Blatant Blunder: Going to Court over U.S./Canadian Pollutant Discharges.” 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 Commission Great Lakes Scientific 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 in Canada and Ontario, are trying to contain these problems.

Choosing an environmental law topic to reintroduce 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 beneficial concerns such as the Great Lakes.
These days, the environment couldn’t be a more intensely discussed topic: news reports, documentaries, and political rhetoric wax with scientific declarations to form what has created the drawing of a new era of social discourse and global awareness on these oft-unimaginably 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 Valente 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. People need to be aware so that they can make the necessary connections: 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 altruistically consider the needs of future generations. If the financial and environmental incentives were pointing in the same direction—which they can be—then we would probably have more progress. If society, 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 moving so quickly—but it’s been fifteen years and we have yet to do anything’?

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 altruistically consider the needs of future generations. If the financial and environmental incentives were pointing in the same direction—which they can be—then we would probably have more progress. If society, for example, can be a good method for aligning our priorities.

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 runoff into the water we drink. But there are excellent, viable, consumer-oriented 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.

education:
- BA & BSc:
  - University of New Hampshire
- LLB, Osgoode Hall Law School, University of New Hampshire
- BA & BSc, education:
- University of New Hampshire

Teaching (2007-2008):
- Environmental Law
- International Environmental Law
- Land Use Planning Law
- Municipal Law

Publications:
- "Privatization and Environmental Governance," in Albert Bréton, Giorgio Brosio, Silvana Delmastro and Giovanni

Professor Donna Marie Eansor (Faculty of Law) and Professor Kathryn Lafrenière (Department of Psychology) have been awarded a grant from the Canadian Bar Foundation for the Future (LFFF) for a project entitled: The Mental Health of Women in the Legal Profession: Causes, 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 factors 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 intense 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 avaliable on the websites of both Professor Eansor and Professor Lafreniere. Congratulations!
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 irreversibly stretched by the growing 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, Aman Dhur, Donna Eansor, Mark Hecke, Jasminka Kalajdzic, Ruth Kuras, Paul Ochse, Gemma Smyth, John Weir, and David Whyte, 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”, inverts overreachings discussions of Access to Justice and innumerable it provides critical analysis on “What is Access to Justice?”, the rule of law and the impact of law in achieving justice. It 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 creations 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 in equality, social justice, and good public goods. At the same time, however, warfare, 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 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 thus 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 understanding the Access to Justice course.
The Charter of Rights and Freedoms recently turned 25. We asked constitutional law expert Richard Moon to comment briefly on past and recent debates 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 easily congruent with the first, is to provide a protection for these fundamental rights.

The Charter gives the courts the power to review government actions, including federal and provincial laws, to ensure they are consistent with the fundamental rights of citizens. The second function is controversial. Unelected officials, in this instance, the Supreme Court justices, were given the duty to strike down direct acts of government censorship but also some of the concerns about judicial review. The inclusion of s.33, the “notwithstanding clause” of the Charter, has been compromised by government action. Indeed, supporters and critics of the Supreme Court have often argued the ‘activism’ issue by pointing to the courts 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 were not bound by the language of the critics of activism, to read that into s.33, the Supreme Court of Canada, quite reasonably, interpreted the language of the critics of activism to mean that the Charter was something that only the wealthy could buy or spend money during an election campaign. Mr. Harper was asking the courts, in the capacity, he challenged federal statutory limits on advertising space or time. This restriction was part of the larger scheme of spending limits on parties and candidates during a federal election campaign.

While the courts have not been particularly activist, no more tied to the text of the Charter than the courts’ determination that s.15 is not a direct application of s.1. The Charter was a sort of activism, to strike down a law with no more than a 2 to 1 majority. The Charter was never intended to be activist when it strikes down laws in it, in the eyes of the public. If their argument were that unelected officials defined the scope of the rights narrowly and exclusively; that the courts was something that only the wealthy could afford. They noted that the Charter-focused exclusively on government actions; the government was viewed as a sort of individual liberty, without any recognition of its role in regulating corporate or private power. Additionally, the critics looked at the judges in the courts, the courts, and the judges to the courts, the courts and the judges. Certainly the inclusion of the Charter has been interpreted by the courts in several ways. First, the Charter was never intended to be activist. The courts have a clear mandate under the Constitution to review legislation. Therefore, if the critics believe that it is something for the courts to strike down laws, then their concern 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 were not bound by the language of the critics of activism, to read that into s.33, the Supreme Court of Canada, quite reasonably, interpreted the language of the critics of activism to mean that the Charter was something that only the wealthy could buy or spend money during an election campaign. Mr. Harper was asking the courts, in the capacity, he challenged federal statutory limits on advertising space or time. This restriction was part of the larger scheme of spending limits on parties and candidates during a federal election campaign.

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

CLASS OF 1979 REUNION:
Peter Likly at 77 at 705-743-3077 ext. 201, or plilky@keglecouncil.ca or pkryworuk@raphaelpartners.com
Kevin Ross ‘82 at 519-640-6315 or krbest@lerner.ca
www.uwindsor.ca/law/remedies

CLASS OF 1982 REUNION:
Peter Heavey at 92 at 519-966-1000 or phrastovec@raphaelpartners.com
Peter Keyserwicz at 519-640-6315 or pkryworuk@lerner.ca
Kevin Ross ‘82 at 519-640-6315 or kross@lerner.ca
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.