



ASPER CHAIR VISION FOR 2007-2008



Bryan Schwartz, Asper Chair

The creation of the **The Marcel A. Desautels Centre for Private Enterprise and the Law** is a breakthrough development for Robson Hall. We at the Asper Chair intend to work closely with John Pozios, the experienced and talented first Director of the Desautels Centre, to find opportunities to pool our resources and ideas. John Pozios and I are exploring the possibility of a joint graduate program in law and business. Building on an initial collaboration that resulted in last year's symposium on the future of the Canadian Wheat Board, our major joint project for 2007-08 will be next spring's international symposium on franchise law, which will bring lessons from around the world to the very practical question of whether Manitoba should proceed with its own franchise legislation. Following the May 2007 release of the Manitoba Law Reform Commissions' "Consultation Paper on Franchise Law," franchise symposium assistant Leandro Zylberman has assisted us in drafting a policy-based response, to be accompanied by a survey of franchise legislation around the world.

This winter, Mary Shariff, a highly promising new appointment to the faculty, will be teaching the International Business Law course

inaugurated when the Asper Chair was created in 1999. Meanwhile, I will be working on developing a new course in e-commerce. Eventually, it is hoped that Mary and I will be able to alternate in teaching this tandem of courses, which, along with the International Trade Law course, form the core of the teaching program offered by the Asper Chair.

Among my own research directions in the international business and trade area will be to continue working on the problem of the recognition of foreign professional and vocational credentials in Canada. Manitoba appears poised to take a first step in addressing this issue this fall, when it enacts its own *Fair Registration Practices in Regulated Professions Act*.

In response to the countries (Canada and the United States included) that have been studying resolutions in favour of referring Iranian President Mahmoud Ahmadinejad to the U.N. Security Council for incitement to genocide, Asper Chair research assistant Chris Donaldson and I have been studying whether such an indictment could be successful.

With regards to the Asper Review, I have been developing a website, which will include information about past and current issues, the submission process, international business and trade courses at Robson Hall, and the Asper Review Prize, which was inaugurated this past year.

This past summer I had the pleasure of working with one of the strongest cadre of summer research students I have ever seen. The new Shelley M. Weiss Publications Office has proved to be a happily collegial and productive environment for them.

IRANIAN INDICTMENT MOVING THROUGH PARLIAMENT

In a series of statements that have shocked the world and brought global condemnation, Mahmoud Ahmadinejad, President of the Islamic Republic of Iran, has called for the destruction of Israel and labeled the Holocaust a myth. He has also been testing the limits of diplomacy by pushing the Iranian nuclear program forward in the face of multiple U.N. sanctions; closer, many believe, to his ultimate goal of developing a nuclear bomb.

In December 2006, in response to these

activities, the Jerusalem Center for Public Affairs released an indictment of Ahmadinejad on the charge of incitement to genocide against the Israeli people. In Canada, B'nai Brith quickly followed suit and issued its own indictment, calling upon the Canadian government to refer Ahmadinejad to the U.N. Security Council for trial. Both the American and Canadian governments have been debating legislation that would accomplish just that, and over the course of the summer Dr. Schwartz and Asper Chair research as-

FRANCHISE LAW SYMPOSIUM COMING SOON

Manitoba's franchise industry currently faces a fundamental change in its legal environment: the prospect of having franchise legislation introduced in the province. Franchises are regulated all over the world, with legislation demanding pre-contract disclosure, registration, and imposing the right of association and the duty of good faith and fair dealing. Thus far, only three provinces in Canada have introduced such legislation. The Manitoba Law Reform Commission is in the process of reviewing suggestions as to what Manitoba should do.



The Asper Chair of International Business and Trade Law, in conjunction with the Marcel A. Desautels Centre for Private Enterprise and the Law, will be hosting a franchise symposium in March of 2008. The symposium will deal with important topics to franchising, including whether Manitoba needs franchise legislation and how it should be framed, in light of lessons learned from other jurisdictions. The organizers hope to attract speakers from Canada, the U.S., and beyond, including corporate leaders as well as leading legal academics and practitioners. Ample opportunity will be provided for audience participation.

This is an exciting time for franchising as Manitoba has the opportunity to craft an innovative statute informed by the experiences of other jurisdictions. More information will be provided as the symposium date draws near.

sistant Chris Donaldson have been probing the possibilities of success that any such indictment might have.

Legal, economic, and military options are being debated as possible responses to the threat that many states perceive in light of the Iranian nuclear program and the rhetoric that accompanies it, and Dr. Schwartz and Mr. Donaldson hope to make some contribution to this crucial discussion. Future plans may include making a submission to any parliamentary committees that study the matter in the fall.

INTRODUCING SUMMER STUDENTS WORKING HAND-IN-HAND WITH THE ASPER CHAIR

THE CANADIAN CREDIT MANAGEMENT FOUNDATION FELLOWS

PERRY CHEUNG will receive his LL.B. from Robson Hall in 2008. He previously studied business at the University of Western Ontario. In addition to his involvement with pro bono research projects, Perry has also been a distinguished student athlete. He has been involved with the *Asper Review of International Business and Trade Law* as an editor for Volumes 6 and 7. Upon graduation, Perry will begin articling with Blake, Cassels, & Graydon LLP in Calgary, Alberta. "Working in the Publications Office has been like learning to ride a bike. There was much to learn and there were bumps along the road, but I have come away with invaluable experiences and skills that will last for a lifetime."



ALEXANDRA DUECK is entering her third year of law school at Robson Hall. She is the incoming president of the Manitoba Students Business Law Group. Alexandra previously completed a Bachelor of Commerce (Honours) with a double major in International Business and Marketing at the I.H. Asper School of Business. Last summer, she worked as a research assistant to Professor Bryan Schwartz, making her a great fit for her current position as a Desautels Credit Management Fellow for the *Asper Review*. Upon graduation in 2008, she will begin articling with Thompson, Dorfman, Sweatman LLP in Winnipeg, Manitoba. "Working with my classmates has not only been a lot of fun, but a great learning experience too."



UNDERNEATH THE GOLDEN BOY STUDENT EDITOR

ANDREW BUCK will be entering his second year of law school at Robson Hall. He worked as a journalist at several Manitoba newspapers before returning to post-secondary education. This experience, combined with his joint Bachelor of Arts degree and Communications diploma from the University of Winnipeg and Red River College, provided him with ample exposure to research, writing, and editing. He became interested in the development of public policy and the legislative process while covering civic issues as a journalist. Law school—and *Underneath the Golden Boy* in particular—have allowed him to apply his practical knowledge of the workings of public bodies to scholarly analysis and proposals in the area of government reform. "I've enjoyed this job from the editing standpoint and also the opportunity for research and analysis that it has provided."



ASPER CHAIR RESEARCH ASSISTANT



CHRIS DONALDSON will be entering his second year of law school at Robson Hall. Before coming to law school, he completed a Bachelor of Arts degree at Wilfrid Laurier University with majors in Archaeology and Classical Studies. He is active in athletics, including Law League hockey and intramurals, and he volunteers as a Reading Buddy at Winnipeg-area elementary schools. This summer, Chris assisted in researching whether an indictment of the Iranian president to genocide could be successful. "Being able to bounce ideas off the other students in the office was a valuable aspect of the research process."

FRANCHISE SYMPOSIUM ASSISTANT

LEANDRO ZYLBERMAN arrived in Winnipeg from Argentina in April 1997. He graduated from the University of Winnipeg with a Bachelor in Arts (Classics Gold Medal) in 2005 and is now entering his third year at Robson Hall. At his alma mater, Leandro was president of the Hillel Jewish Student's Association for two consecutive years. At Robson Hall, he was elected as First and Second Year Representative under the MLSA. This past summer, Leandro composed a response to the Manitoba Law Reform Commission's "Consultation Paper on Franchise Law," discussing whether Manitoba ought to adopt franchise legislation. He also compiled a survey of franchise legislation around the world, spanning 23 countries and three international franchise associations. Upon graduation in 2008, Leandro will begin articling with Thompson, Dorfman, Sweatman LLP. "Working at the Publications Office has been extremely rewarding. It was a great pleasure to work in such a stimulating environment, accompanied by some of the finest people I know. It is definitely one of the highlights of my academic life."



L-R: Leandro Zylberman: future mmmuffins franchisee; Alexandra Dueck: known to "throw the book at you"; Perry Cheung: aka. Perry Potter (legal wizard); Chris Donaldson: fighting evil in the Middle East with nothing more than his intellect and an evil look; Andrew Buck: looks remarkably like the Golden Boy, but mercifully, with more clothing.



PUBLICATIONS

The *Asper Review of International Business and Trade Law* is the only Canadian law journal dedicated to the subjects of international business and trade law. The journal addresses issues of interest to Canadians, practitioners, and students of international business law and international trade law around the world.

The journal is currently in its seventh year of publication. Volume VI of the *Asper Review*, released in July 2007, focuses on health issues, including a proposal to stimulate pharmaceutical innovations and an analysis of the barriers to exporting generic drugs to developing countries. As well, Volume VI studies Internet and e-commerce issues, such as the regulation of spam and the relationship between file-sharing and copyright infringement. This volume also contains selections from public record documents, including both a Panel decision on the Agreement on Internal Trade and a NAFTA decision.

Volume VII, forthcoming in 2007, continues discussion on Internet and e-commerce issues. This volume covers a variety of other international business and trade topics as well, including an analysis of China's attempt to join the WTO, a review of U.S. laws on securities, an appraisal of the sanitary and phytosanitary measures at the WTO, and an examination of empirical studies of patent law.

Underneath the Golden Boy, Volume V, is proceeding towards publication later this year. The series reviews recent developments in Manitoba legislation, and explores wider issues of legislative process and reform. Dr. Bryan Schwartz inaugurated the project, and continues to serve as its general editor.

Volume V will feature detailed profiles of eight recent Manitoba statutes, including the debates that surrounded their origin and passage. In addition, Professor Debra Parkes will comment on the review of Manitoba's *Employment Standards Code*. Dr. Schwartz and this year's senior student editor, Andrew Buck, will explore four dimensions of reform to legislative process in Manitoba, including fixed election dates, controlling partisan advertising by incumbent governments, reforming the process of calling public inquiries, and restricting the governing party's discretion to call sittings of the House.

Underneath the Golden Boy is part of a trio of annual publications issued by the Faculty of Law. The *Asper Review* works in close cooperation with UTGB as well as the *Manitoba Law Journal*. The Shelley M. Weiss Publications Office now houses all three publications, and student assistants and editors working together have found the exchange of ideas and resources to enhance both the efficiency and enjoyability of the experience. Equipment and software purchased with *Asper Chair* resources is shared whenever possible with the creators of the other two publications.



COMINGS AND GOINGS

In addition to serving as editor of the *Asper Review* and *Underneath the Golden Boy* Dr. Schwartz's activities since the last newsletter have included the following:

Publications

- B. Schwartz, J. Pozios & L. Zylberman, "Response to Consultation Paper on Franchise Law," submitted August 2007, publication in *Underneath the Golden Boy* 2007 ed. forthcoming. Sponsored by the *Asper Chair of International Business and Trade Law* and the *Desautels Centre for Private Enterprise and the Law*.
- B. Schwartz & M. Kim, revised version, "Economic Prizes: A New Model for Pharmaceutical Innovations" in Vol. VI of the *Asper Review*. The authors propose that government-sponsored prizes might spur innovation in the development of drugs for third world countries, given the failure of the market system to do so.
- B. Schwartz & P. Cheung, "East vs. West: Evaluating Manitoba Hydro's Options for a Power Transmission Line," expected to appear in Vol. VII of the *Asper Review*. The authors discuss the issues surrounding the possibility of constructing a hydro-electric transmission line to the east of Lake Winnipeg, with a focus on its impact on the bid for a UNESCO World Heritage Site in this area, as well as the implications of Minnesota's recently passed Bill SF2096.
- B. Schwartz & A. Buck, "Reforming Legislative Process," expected to appear in Vol. V of *Underneath the Golden Boy*. In four concise essays, the authors explore the following four dimensions of reform to legislative process in Manitoba:
 - including fixed election dates;
 - controlling partisan advertising by incumbent governments;
 - reforming the process of calling public inquiries;
 - restricting the governing party's ability to keep the house from sitting.

Presentations

- "Guidelines and the Exercise of Crown Discretion" Fourth Annual Crown Defence Conference (28 Sept. 2006)
- Appearance at a Standing Committee on Aboriginal Peoples on specific claims, (3 Oct. 2006). Dr. Schwartz's comments are extensively quoted in the committee's final reports. Standing Senate Committee on Aboriginal Peoples, "Negotiation or Confrontation: It's Canada's Choice: Final Report of the Standing Senate Committee on Aboriginal Peoples Special Study on the Federal Specific Claims Process" (Dec. 2006)
- "The Canadian Wheat Board in the context of Canada's role in the future of trade negotiations," Canadian Wheat Board Conference, (Fall 2006)
- "Justice Sam Freedman's Contribution to Canadian Jurisprudence," Jewish Heritage Centre of Western Canada (7 Nov. 2006)

Op-ed Pieces and other media appearances

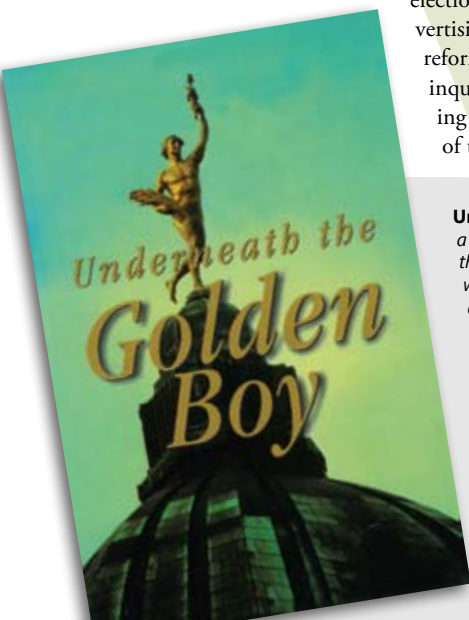
- "East side the right side: It is immoral to block Hydro line and perpetuate poverty" *Winnipeg Free Press* (14 May 2007) A15
- "What it means for Manitoba: Role of government is most important issue" *Winnipeg Free Press* (20 Apr. 2007) A13
- "Economic freedom underestimated: Government meddling in economy corrupts, demeans" *Winnipeg Free Press* (19 Apr. 2007) A14
- "Equalization is killing us with kindness: Free money makes Manitoba statist, mediocre" *Winnipeg Free Press* (18 Apr. 2007) A15
- "Sleepers in Constitution: Collective rights create distinct charter issues" *Winnipeg Free Press* (17 Apr. 2007) A15
- "Privacy dealt with in the open" *Winnipeg Free Press* (16 Apr. 2007) A11
- "Great big time wasters: Constitution need not get in way of reform" *Winnipeg Free Press* (15 Apr. 2007) B5
- "Charter matters, but not much: 'Sacred' nature of 1982 Constitution is a mixed blessing" *Winnipeg Free Press* (14 Apr. 2007) A19
- "O Canada, O Quebec! Declaring Quebecers a nation closes door on constitutional change" *Winnipeg Free Press* (24 Nov. 2006) A15

Labour Arbitration Awards

- *Boily v. ADM Milling*, [2007] C.L.A.D. No. 131
- *Tacan v. Sioux Valley First Nation*, [2007] C.L.A.D. No. 66

Court cases

- Dr. Schwartz has been co-counsel in a number of cases involving international trade law or commercial rights of First Nations, including:
- *MidWest Quilting v. Canada* (concerning the administration of a duty remission program), in progress;
 - *Sappier v. Gray* (co-counsel with Jack R. London, Q.C., concerning aboriginal rights to engage in forestry for "domestic purposes"), decision of the Court rendered in 2006;
 - *McDiarmind Lumber v. God's Lake First Nation* (co-counsel with Jack R. London, Q.C.), decision of the Court rendered in 2006.





ASPER REVIEW OF INTERNATIONAL BUSINESS AND TRADE LAW



Submissions are being accepted for the Current Volume of the Asper Review of International Business and Trade Law

- The Review welcomes submissions that are academically sound and accessible to a general audience.
- Topics should address trade issues that are of global interest or in which Canada has a material involvement.
- The *Asper Review*, now going on its VIII edition, is Canada's only refereed law journal dedicated to international business and trade law. It is already carried on LexisNexis and HeinOnline as well as in many hardcopy library holdings, and will be added to Westlaw and the Open Access Law Program in the near future.
- The *Asper Review* is edited and published at the Asper Chair of International Business and Trade Law Centre at the University of Manitoba Law School.
- Deadline for student submissions for Volume VIII is April 1, 2008, but articles received before then will be assessed on a timely basis.

ASPER REVIEW PRIZE

In Memory of Israel (Izzy) Asper

- A prize of \$1,000 will be awarded to the best student submission accepted for publication from a student from another university. (U of M students are eligible instead for international business or trade course prizes.)

Submissions may be sent via email to: maria_tepper@umanitoba.ca

Or by mail to: **Asper Chair
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University of Manitoba
Winnipeg, MB
Canada R3T 2N2**

The *Asper Review* is published by the Asper Chair of International Business and Trade Law, with the sponsorship of the Canadian Credit Management Foundation and the University of Manitoba Legal Research Institute. Overseeing this publication are Dr. Bryan Schwartz (Asper Chair), Dr. Michelle Gallant (Associate Dean of Research and Graduate Studies), and Canadian Credit Management Foundation Fellows, Perry Cheung (LL.B. 2008) and Alexandra Dueck (LL.B. 2008).

All articles in this newsletter compiled by Alexandra Dueck.

Layout and design of this newsletter facilitated by the Robson Hall communications team: Darcy Patterson and Sue Law.



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