



## MANITOBA FRANCHISE LAW SYMPOSIUM A SUCCESS



Bryan Schwartz presenting at the Manitoba Franchise Symposium on March 14, 2008

By John Pozios, Director, Marcel A. Desautels Centre for Private Enterprise and the Law

**W**ith the enactment of franchise-specific laws in four jurisdictions, the need for uniformity in franchise legislation in Canada is greater than ever. Alberta, Ontario, Prince Edward Island and most recently New Brunswick have passed laws targeting franchising. Quebec offers limited protection in its Civil Code.

The regulation of franchising is designed to protect the franchisee by imposing pre-sale disclosure requirements on the franchisor and creating substantive duties of good faith, fair dealing and rights of association. Problems arise when individual jurisdictions take their own path without considering the practical implications on business.

Franchising has been regulated for dozens of years outside of Canada. International franchisors are accustomed to operating in diverse regulated environments and have the resources to deal with complexities associated with expansion. It is the domestic franchisor who is finding the patchwork of laws across Canada onerous.

When the Manitoba Law Reform Commis-

sion (MLRC) requested a response to their Consultation Paper on Franchise Law last year, little consideration had been given to the regulation of franchising since Manitoba's legislature failed to pass Bill 18, *The Franchises Act* into law in 1992. The Desautels Centre for Private Enterprise and the Law and the Asper Chair of International Business and Trade Law at the University of Manitoba's Robson Hall took on the challenge of investigating the matter further.

What resulted was not just a paper but an open discussion between academics, students, legislators, solicitors, litigators and industry leaders from across Canada. They converged in Winnipeg on March 14 to share unique experiences and views on the state of franchising at the 2008 Franchise Law Symposium.

It was clear to all in attendance that lawyers and their clients preferred the predictability of uniformity across jurisdictions, if a regime were to be imposed at all. The symposium proceedings, the original consultation paper and the response can all be found online at: [http://umanitoba.ca/faculties/law/franchise\\_symposium/](http://umanitoba.ca/faculties/law/franchise_symposium/).

**B**RYAN SCHWARTZ holds a LL.B. from Queen's and a Master's and Doctorate in law from Yale Law School. He has been a member of the Faculty of Law since 1981, and in 1999 became the inaugural Asper Professor of International Business and Trade Law. Bryan has published seven books and over sixty academic articles. He is the founding and general editor of both the *Asper Review of International Business and Trade Law* and of the *Underneath the Golden Boy* series, an annual review of legislative developments in Manitoba. Over the years,

he has received numerous awards and honours for teaching, research and community service.

Bryan's practical experience has included acting as counsel for the Pitblado Law firm since 1994. He has advised or presented in a wide variety of public and commercial law cases in a wide variety of courts and tribunals. He has participated in the drafting of briefs or presentation of oral argument in over a dozen Supreme Court of Canada cases. In recent years his clients have also included federal, provincial, municipal and aboriginal governments,



## ASPER CHAIR VISION FOR 2009

Bryan Schwartz, Asper Chair

I expect to be actively working with John Pozios at the Desautels Centre [for Private Enterprise and the Law] this year on several major innovations.

One is the area of e-commerce. I am hoping to have the concept and accompanying teaching materials ready within a year for a new course in e-commerce and internet law. The aim will be not only to explore some of the technical issues, but to use the course to explore how the law should adapt to the broad policy issues that arise with new technologies. These include the protection of privacy, taxation of cross-border e-transactions, the constant tension between those who want to download material for free and creators who want strict control of their intellectual property, and the ongoing problem of internet censorship by authoritarian regimes.

We hope to have a new course approved and in place in a year or two. In the meantime, John and I will be aiming to design an international symposium of cutting edge policy issues concerning the internet. Such a conference might be a great way to "kick off" the new course.

John and I are also working with the Asper School of Management on a potential project that would allow law students to study cross-border transactions at Ben Gurion University, perhaps as early as the summer of 2009. Funding for students will be available from a donor, and the trip to Israel would include some touring as well as classroom time. Students at the law school can take one course outside of the law school for credit, and the thought is that students would receive credit for this course.

as well as private individuals, non-profits and administrative agencies. The issues in which he has been involved include constitutional, aboriginal human rights, labour, the environment, health care reform and regulation of the professions.

Bryan has also served as an arbitrator in international trade law cases and labour grievances. He teaches labour law, has been a Canada Labour Code adjudicator since 1994, and has served as a sole arbitrator or panel member in a number of grievances brought under collective agreements.

## MEET THE LL.M. STUDENTS WORKING WITH THE ASPER CHAIR

**MELANIE BUECKERT**, an LL.M. candidate at Robson Hall, also serves as legal research counsel to the Manitoba Court of Appeal. She has completed her LL.M. coursework and her thesis concerned with electronic employee monitoring in non-unionized workplaces in Canada.

This thesis covers a range of topics, including the monitoring of employees' computer, internet and e-mail usage; the tracking of employees using various location awareness technologies; and the use of biometric identification technologies in the workplace. Melanie's advisor is Prof. Bryan Schwartz, while internal and external review are provided by Prof. Debra Parkes and Prof. Michael Geist (University of Ottawa) respectively. In addition to the invaluable advice and guidance provided by members of the faculty, the university has generously sponsored Melanie's endeavours through the Freedman and Sgayias Graduate Fellowships.



**VALERIE MATTHEWS-LEMIEUX**, received her LL.M. from Osgoode Hall at York University in Toronto on June 20, 2008. The LL.M. program at Osgoode required Valerie to complete six class based courses (with mandatory attendance in Toronto) and a major research paper (MRP). She credits Dr. Bryan Schwartz with providing invaluable advice as her MRP supervisor. Valerie has practiced in the areas of aboriginal, constitutional and labour law for over twenty years and continues to practice in these areas through her own law corporation in Manitoba. She decided to examine First Nations Employment Relationships as her MRP topic. While there has been significant research in other areas of aboriginal and labour law, this field is almost bereft of scholarly analysis. Valerie's ultimate conclusion is that there needs to be significantly more research in this rapidly evolving area as First Nations deliver a vast array of public services and are becoming more involved in economic development initiatives.



## 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 eighth year of publication. Volume VIII, forthcoming in 2008, recaps the Franchise Law Symposium that was hosted at the University of Manitoba in March 2008. It will include the Manitoba Law Reform Commission's consultation paper, as well as several discussion papers from the Symposium itself. The volume will also cover a variety of other international business and trade topics, including jurisdictional conflicts between the dispute settlement mechanisms in bilateral, regional and multilateral trade agreements; issues surrounding the accreditation of foreign credentials; reciprocal obligations in the context of ACP-EU relations; and an examination of the success rates of certain categories of states in the dispute settlement process of the WTO.

Washington and Lee University publishes annual rankings of law journals throughout the world. In its latest rankings, the Asper Review of International Business and Trade Law was ranked 12th among 63 Canadian journals and 67th among 554 non-US law journals. For the full rankings, see <http://lawlib.wlu.edu/LJ/index.aspx?mainid=954>.

Rankings are largely based on the extent to which articles in the journal have been cited in other journals since 2000. The Asper Review is referred to, for example, in 142 articles on the latest version of Westlaw's texts and periodicals data base. The various scholarship in all publications of its editor, Dr. Bryan Schwartz, is referred to 125 times. As the Asper Review only started in 2001 and was only recently added to the Westlaw roster (it has been carried for many years on LexisNexis), it is hoped that the review will continue to maintain its high place in the rankings or even move upwards.

With the Manitoba Law Journal ranked 17th in the survey of Canadian journals and 72nd in the non-US survey, the Faculty of Law at the Univer-

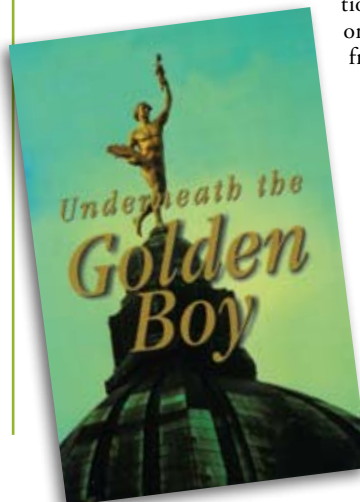
sity of Manitoba already has two well-ranked journals in the Canadian and world markets. Thanks to the efforts of our colleague, Professor Jennifer Schultz, *Underneath the Golden Boy* will also now be carried now by LexisNexis and Westlaw, and should finally begin to appear in the Canadian and world rankings. Having three ranked journals would place the University of Manitoba in rare company among Canadian law schools. Only the University of Toronto would remain ahead.

Volume VI of *Underneath the Golden Boy* will be published in the autumn. This annual publication surveys recent developments in Manitoba legislation, focusing on legislative process and reform. Dr. Bryan Schwartz launched *Underneath the Golden Boy* as a Special Edition of the Manitoba Law Journal. Volume III was the first edition printed under its own masthead.

Volume VI continues the journal's tradition of reviewing a variety of legislation. Two articles focus on amendments to The Employment Standards Code and The Consumer Protection Act (with respect to gift cards). Four articles examine new legislation in Manitoba: The Apology Act, The Good Samaritan Act, The Registered Retirement Savings Protection Act, and The Organic Agricultural Products Act.

Volume VI has three special feature articles. Dr. Bryan Schwartz and last year's student editor, Andrew Buck, explore the effects of amendments to Manitoba's Elections Act that proposes changes to political communications in non-election years. Dr. Schwartz and Natasha Dhillon-Penner, a Canadian Credit Management Foundation Fellow, analyze constitutional, international, and human rights issues related to Manitoba's recognition of foreign credentials. Edward H. Lipsett proposes legislation that offers a compromise to restriction on hate communication and protection of freedom of expression.

*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.



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 & A. Buck, "Articles on Democratic Reform," appearing in volume V of *Underneath the Golden Boy* (2007). In four concise essays, the authors explore the following four dimensions of reform to the legislative process in Manitoba:
  - Fixed Date Elections (5 U.T.G.B. 1);
  - Inquiries (5 U.T.G.B. 13);
  - Partisan Advertising by Incumbent Governments (5 U.T.G.B. 25); and
  - Minimum Sitting Dates (5 U.T.G.B. 39).
- B. Schwartz, J. Pozios & L. Zylberman, "Response to Consultation Paper on Franchise Law," appearing in volume V of *Underneath the Golden Boy* [(2007) 5 U.T.G.B. 83]. The paper will also appear in volume VIII of the *Asper Review of International Business and Trade Law* (2008).
- B. Schwartz & P. Cheung, "East vs. West: Evaluating Manitoba Hydro's Options for a Hydro-Transmission Line from an International Law Perspective," appearing in volume VII of the *Asper Review of International Business and Trade Law* [(2007) 7 *Asper Rev. Int'l Bus. & Trade L.* 1]. 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 & M. R. Bueckert, "Regulatory Takings in Canada," appearing in volume 5, issue 3 of the *Washington University Global Studies Law Review* [(2006) 5 *Wash. U. Glob. St. L. Rev.* 477]. The authors discuss the safeguards to Canadian property rights from regulatory takings.
- B. Schwartz, "Judaism and the Comic Strip," appearing in volume 7, issue 3 of *Jewish Renaissance* (2008). The article explores the strong and often surprising links between the holy writings of ancient Jewish tradition and comic books.

#### Presentations

- Presentation to the Manitoba Heavy Construction Association regarding the east-side powerline project (November 2007).
- Presentation to the Labour Law section of the Manitoba Bar Association regarding the interaction of the Charter with Labour Law (Spring 2008).
- Presentation with John Pozios to a subsection of the Manitoba Bar Association regarding Franchise Law reform (Spring 2008).
- Co-organizer of the Franchise Law Symposium. Dr. Schwartz presented the "Response to Consultation Paper on Franchise Law" paper and chaired the final panel (14 March 2008).
- Witness before the Standing Committee on Aboriginal Affairs and Northern Development. Dr. Schwartz was questioned by the Committee about Bill C-30

(16 April 2008).

- Presentation to the Civitas Society regarding the reform of human rights commissions (3 May 2008).
- Presentation for the Western Canadian Aboriginal Law Forum in Vancouver, B.C., entitled "Bill C-30 Specific Claims Tribunal Act – An Overnight Success After 50 Years" (14 May 2008).
- Expert Witness before the Senate Standing Committee on Aboriginal Peoples, speaking on the topic of the new specific claims bill (28 May 2008).
- "Equalization Payments as the Opiate of the Masses" for the Frontier Centre for Research on Public Policy
- Follow-up interview for the Frontier Centre for Research on Public Policy, available: <[http://www.fcprp.org/main/publication\\_detail.php?PubID=2167](http://www.fcprp.org/main/publication_detail.php?PubID=2167)>.

#### Forthcoming Projects

- Volume VI of *Underneath the Golden Boy*
- Volume VIII of the *Asper Review of International Business and Trade Law*

#### Articles in Progress

- Accreditation of Foreign Credentials
- Deterrent Options to Iran's Violation of the NPT
- Reform of Election Financing and Government Spending for Partisan Purposes

#### Court Cases

Dr. Schwartz has been co-counsel in a number of cases involving the commercial rights of First Nations, including:

- *Canada (Attorney General) v. Lameman*, 2008 SCC 14 (co-counsel with Chief Wilton Littlechild, Q.C. and Jack R. London C.M., Q.C., concerning an application by the Federal Government for summary dismissal of a breach of fiduciary duty claim by the descendants of the Papaschase Band).
- *R. v. Kapp*, [2008] S.C.J. No. 42 (co-counsel with Jack R. London, C.M., Q.C., concerning the constitutionality of communal fishing licenses granting three aboriginal bands exclusive rights for 24 hours to fish salmon at the mouth of the Fraser River. The majority opinion also cited with approval a position from Dr. Schwartz's book, *First Principles: Constitutional Reform with Respect to the Aboriginal Peoples of Canada, 1982-1984*).
- *Ermieskin Indian Band and Nations v. Canada; Samson Indian Nation and Band v. Canada*, Appeals to the Supreme Court of Canada heard and reserved 22 May 2008 (co-counsel with Jack R. London, C.M., Q.C., concerning interest on royalties generated by commercial exploration of oil and gas fields under reserves).
- *R. v. Creekside Hideaway Motel Ltd. et al.*, 2008 MBCA 28 (co-counsel with P.M. Jerch, concerning exemptions to provincial legislation prohibiting smoking in enclosed public spaces for reserve lands).

## ASPER FUNDED COURSES ADD VALUE TO ROBSON HALL PROGRAM

By Bryan Schwartz, Asper Chair

Asper funds have permitted the creation of two regular course offerings, one in international business, the other in international trade. One of our brightest young colleagues, Mary Shariff, will be teaching the former for at least some time while I focus on developing some additions to the Asper teaching program.

I must admit that the trade law course is a particular favourite of mine. To me, the world trade system is the unsung hero of the international system – an unglamorous but stupendously successful contribution to the liberalization of trade, and with it, enhanced prosperity and freedom. In studying global trade, students have the chance to explore some of the most challenging policy debates that take place around the world. Student feedback this past year, as in many others, has shown that the students appreciate the breadth of the course.

- Great class! Very informative and I enjoyed it a lot!
- Very interesting prof.
- Excellent course. One of the few (if only) courses in all the law school that looks at the big picture. The prof is very funny and Schwartz's lectures capture my attention.
- The course readings were good because they weren't case law.
- I feel I learned something valuable from this course about the way the world works.
- Keep up the good work.
- Great class, great professor.
- Best prof at Robson Hall.

I am always looking for ways to integrate the study of international trade and business law into study in my legislative process course ("great course, brilliant prof!") and its accompanying annual publication, *Underneath the Golden Boy*. The Manitoba franchise law reform project illustrates how global developments can and should influence domestic law making. Earlier collaborations included our two major conferences on democratic reform and on money laundering and proceeds of crime. My Labour Law course is acquiring more of an international dimension in light of the decision of the Supreme Court of Canada in the Health Services case. The court maintained that certain provisions of the Charter, including freedom of association, should be interpreted, if possible, as being consistent with international documents to which Canada is a party in the labour area.

Some of the comments this past year included:

- "Excellent course, excellent instructor."
- "Excellent course which has stimulated my interest in the field."

We are currently exploring the potential offering of two new courses that would interact with those already created or enhanced by the Asper Chair endowment. One would be in internet and e-commerce law. It could be a perspectives course, looking not only at technical issues but the broad policy and social issues raised by the cyberworld. The other is an international business framework course to be taught to our students in June at Ben Gurion University. The hope would be to generate the same kind of student enthusiasm for learning and scholarship that has been a hallmark of other courses enhanced by the Asper Chair endowment.

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

## THE CANADIAN CREDIT MANAGEMENT FOUNDATION FELLOWS

**CHRIS DONALDSON** is in his third year of law school at Robson Hall. Before coming to law school, he completed a Bachelor of Arts degree (Honours) at Wilfrid Laurier University in 2004. He is active in athletics at Robson Hall, captaining the faculty's hockey program, and also volunteers at the University of Manitoba's Legal Aid Clinic. Last summer, he worked as a research assistant to Professor Bryan Schwartz, making him a great fit for his current position as a Desautels Credit Management Fellow for the Asper Review. Upon graduation in 2009, he will begin articling with Aikins, MacAulay & Thorvaldson LLP in Winnipeg, Manitoba. "Working in the Publications Office has allowed me to grow academically in ways that no classroom could provide."



**NATASHA DHILLON-PENNER** is in her second year of law school at Robson Hall. She previously completed a Bachelor of Arts with a major in International Relations and a minor in Religious Studies at the University of Calgary. Natasha volunteers at Ten Thousand Villages and has recently developed a love of gardening. She spent the summer working as an editor of the Asper Review of International Business and Trade Law. "I really enjoyed the research, writing and editing work, which was enhanced by the fun office environment! My officemates provided a great sounding board for ideas and were an immense support through the research and writing process."



## UNDERNEATH THE GOLDEN BOY STUDENT EDITOR

**HEATHER-BELLE GUEST** is in her second year of studies at Robson Hall. Before entering law school, she was an executive in the Winnipeg not-for-profit arts community. Heather-Belle earned her Bachelor of Arts (Business and Administration Gold Medal, Rhetoric and Communications Gold Medal) from the University of Winnipeg in 2007. During her undergraduate studies, Heather-Belle volunteered with Disabilities Services as a computerized note-taker and proctored exams for students with special needs. Heather-Belle has been appointed Treasurer of the Manitoba Law Student's Association for the 2008-2009 academic year. "Working in the Publications Office this summer has been both challenging and rewarding. I appreciate this unique opportunity."



## ASPER CHAIR RESEARCH ASSISTANT



**ANNE AMOS-STEWART** is in her second year at Robson Hall. Before entering law school, Anne completed a Bachelor of Business Administration at Bishop's University in 1999. She went on to spend several exciting years living, working and travelling abroad. Countries she called home include England, Taiwan and South Africa, where she opened and ran a clothing boutique before returning to Canada to go back to school. Part of Anne's research work focused on the equity and adequacy of school funding in Canada. She also assisted Professor Schwartz in creating a comprehensive specific claims website. "I have never enjoyed my work or working environment more."

## E-COMMERCE PROJECT ASSISTANT

**TIM MITCHELL** is in his second year of law school at Robson Hall. Prior to law school, Tim received a Bachelor of Science (Honours) with a double major in Math and Physics, also at the University of Manitoba. Now working on campus over the summer, he clearly can't bear to be away from the place. He has helped Professor Schwartz prepare a course on E-Commerce and Internet Law, as well as assisting the Desautels Centre to prepare for a symposium on internet freedom issues. "I was once told that you either enjoy the people at your job or the job itself, but never both. That person clearly never worked in the Publications Office."



All articles in this newsletter compiled by Chris Donaldson and Bryan Schwartz.

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Robson Hall  
Faculty of Law - University of Manitoba

For more information on the Asper Chair contact:  
Maria Tepper  
Faculty of Law  
448 Robson Hall,  
University of Manitoba  
Winnipeg MB R3T 2N2  
Canada  
☎ 204 474-9775  
☎ 204 480-1048  
✉ maria\_tepper@umanitoba.ca