

11-2014

## Understanding and Taming Public and Private Corruption in the 21st Century (November 2014)

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THURSDAY NOVEMBER 6<sup>TH</sup> 9-5 PM **AND** FRIDAY NOVEMBER 7<sup>TH</sup> 9-1 PM

1014 ADR (Helliwell Center for Innovation and Dispute Resolution), Osgoode Hall Law School

*THE SECOND OSGOODE HALL LAW JOURNAL SYMPOSIUM:*

UNDERSTANDING AND TAMING PUBLIC AND PRIVATE

# CORRUPTION

DESIGN: UGOCHICA

IN THE 21<sup>ST</sup> CENTURY

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YORK  
UNIVERSITÉ  
UNIVERSITY

# THE SECOND OSGOODE HALL LAW JOURNAL SYMPOSIUM: UNDERSTANDING AND TAMING PUBLIC AND PRIVATE CORRUPTION

THURSDAY, NOVEMBER 6TH, 2014

FRIDAY, NOVEMBER 7TH, 2014

OSGOODE HALL LAW SCHOOL  
IGNAT KANEFF BUILDING  
YORK UNIVERSITY

## ORGANIZERS:

RON ATKEY, MARGARET BEARE, CYNTHIA WILLIAMS

The conference looks at corruption in business, finance, government and enforcement. During the past few years every one of those sectors in Canada and internationally has demonstrated a capacity for corruption. Canada is not alone in falling victim to diverse corruption schemes and not alone in looking for answers. Our conference is an academic exercise to explore the vulnerabilities to corruption, the systems that undermine anti-corruption intentions and the failures of transparency and accountability regimes. We are pleased to have attracted some of the international experts to our conference who can reflect on their experiences and their attempts at solutions.

## Key themes that will be explored include:

- Corruption in undermining international economic development
- Corruption as a facilitator of organized crime
- Corrupt interactions between business and government
- Corruption within Government Institutions
- The U.N. Convention against Corruption (UNCAC)
- The Foreign Corrupt Practices Acts and their extra territorial reach
- Questioning the adequacy of whistle-blowing legislation, policies and practices

# CONFERENCE PROGRAM

NOVEMBER 6, 2014  
OSGOODE HALL LAW SCHOOL, YORK UNIVERSITY

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9:00 AM - 9:15 AM

## OPENING REMARKS

**François Tanguay-Renaud**, Director Jack and Mae Nathanson Centre on Transnational Human Rights, Crime and Security

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9:15 AM - 9:30 AM

## INTRODUCTION

**Lorne Sossin**, Dean, Osgoode Hall Law School

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9:30 AM - 10:45 AM

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## CORRUPTION UNDERMINING INTERNATIONAL ECONOMIC DEVELOPMENT

Chair:

**Craig Scott**, Member of Parliament for Toronto-Danforth (on leave from Osgoode)

Panellists:

**Tonita Murray**, Former director of the Canadian Police College

**Juan Ronderos**, Inter-American Development Bank

**Kevin Davis**, New York University, School of Law

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10:45 AM - 11:00 AM

## Coffee Break

2

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11:00 AM - 12:45 PM

## CORRUPTION AS A FACILITATOR OF CRIMINAL ASSOCIATIONS

Chair:

**John Sandage**, United Nations Office on Drugs and Crime (UNODC)

Panellists:

**Margaret Beare**, Osgoode Hall Law School

**Julian Sher**, CBC

**Frederick Martens**, Investigator, Organized Crime and Corruption

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12:45 PM - 1:30 PM

**Lunch**

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3

1:30 PM - 2:45 PM

**CORRUPT INTERACTIONS BETWEEN  
BUSINESS & GOVERNMENT**

Chair:

**Ron Atkey**, Osgoode Hall Law School

Panellists:

**Milos Barutciski**, Bennett Jones LLP

**Gus Van Harten**, Osgoode Hall Law School

**J. Michael Robinson**, Fasken Martineau DuMoulin LLP

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2:45 PM - 3:00 PM

**Coffee Break**

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4

3:00 PM - 4:45 PM

**CORRUPTION WITHIN GOVERNMENT  
INSTITUTIONS**

Chair:

**François Tanguay-Renaud**, Osgoode Hall Law School

Panellists:

**Stanley Makuch**, University of Toronto

**John Ibbitson**, The Globe and Mail

**Denis Saint-Martin**, University of Montreal

**Adam Radwanski**, The Globe and Mail

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# CONFERENCE PROGRAM

NOVEMBER 7, 2014  
OSGOODE HALL LAW SCHOOL, YORK UNIVERSITY

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9:00 AM - 10:45 AM

## KEYNOTE ADDRESS:

### GLOBAL CORRUPTION AND THE UNIVERSAL APPROACH OF THE UN CONVENTION AGAINST CORRUPTION

**JOHN SANDAGE**, DIRECTOR, DIVISION FOR TREATY  
AFFAIRS, UNITED NATIONS OFFICE ON DRUGS AND CRIME  
(UNODC), VIENNA

**Introduction by Alex Himelfarb**, Director (emeritus) of the Glendon  
School of Public and International Affairs, York University, and Head of  
the Centre for Global Challenges. (Introduced by **Margaret Beare**,  
Osgoode Hall Law School)

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10:45 AM - 11:00 AM

## Coffee Break

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6

11:00 AM - 12:45 PM

## FOREIGN CORRUPT PRACTICES ACTS AND THE ADEQUACY OF WHISTLE-BLOWING PROTECTIONS

Chair:  
**Wesley Cragg**, Schulich School of Business

Panellists:  
**Ellen Gutterman**, Glendon College, York University  
**Mariana Prado**, University of Toronto  
**Poonam Puri**, Osgoode Hall Law School  
**Michelle Ratpan**, The World Bank Group  
**Cynthia Williams**, Osgoode Hall Law School

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12:45 PM - 1:30 PM

## CLOSING REMARKS

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## SPEAKERS

**RON ATKEY** teaches National Security Law at Osgoode Hall Law School (York University) and at Western University Law. In June, 2012, he received from Osgoode the Award for Teaching Excellence among Adjunct Professors. He was the first Chair of the Security Intelligence Review Committee established under the Canadian Security Intelligence Service Act in 1984 to review CSIS and to adjudicate security complaints. Since completing that work, he has served as amicus curiae to the Arar Commission of Inquiry and on several Federal Court anti-terrorism matters, and acts as one of several Special Advocates appointed by the federal Minister of Justice under immigration security certificate cases in Canada. Among other posts, he was elected as Progressive Conservative Member of Parliament for St. Paul's in Toronto for two terms, and was appointed as federal Minister of Immigration in 1979-80 with responsibilities for the Indochinese refugee movement. He practiced corporate and public law for thirty years with Osler Hoskin Harcourt LLP, one of Canada's oldest and best-known law firms, and chaired the Public Law and Regulatory Affairs Department.

**MILOS BARUTCISKI** practices in the areas of international trade, investment and competition law, and other aspects of economic regulation and compliance. He is a member of the board of Transparency International/Canada. He co-chairs the International Trade and Investment Practice group at Bennett Jones LLP, Toronto. Mr. Barutciski has represented Canadian and international clients in matters relating to NAFTA and the WTO Agreements, investment treaties, export controls and trade sanctions, foreign corrupt practices, product regulation, customs laws and international dispute settlement, and is currently representing a number of clients in ongoing investigations by the RCMP Anti-Corruption Unit and the World Bank. Mr. Barutciski is a founding member of the Task Force on Bribery and Corruption of the Business and Industry Advisory Committee to the OECD. He regularly appears in antidumping, countervailing duty and government procurement cases before the Canadian International Trade Tribunal and the Federal Courts. Milos chairs the International Affairs Committee of the Canadian Chamber of Commerce and is a member of the Trade and Investment Commission of the International Chamber of Commerce, the Business and Industry Advisory Committee to the OECD and the Canadian Services Coalition. From 2006-2008, Milos was the President of the International Law Association founded in 1873 in The Hague and headquartered in London, England. Milos is also a Past Chair of the International Law Section of the Canadian Bar Association.

**MARGARET E. BEARE** is Professor of Sociology and Law at York University, Toronto. She served within the Department of the Solicitor General Canada as Director of Police Policy and Research before joining the University where she was for ten years the Director of the Nathanson Centre for the Study of Organized Crime and Corruption at Osgoode Hall Law School. Her publications include 6 books related to organized crime and policing issues.

**WESLEY CRAGG** is currently a Senior Scholar and Professor at York University. He is also Project Director and Principal Investigator for the Canadian Business Ethics Research Network (CBERN). Funded by the Canadian Social Science and Humanities Research Council and other donors, CBERN's goal is to encourage, support and raise the profile of business ethics research in Canada by encouraging networking and dialogue across the private, government, NGO and academic sectors. CBERN is headquartered in the Schulich School of Business at York University.

**KEVIN DAVIS** B.A. (McGill), LL.B. (Toronto), LL.M. (Columbia) is Vice Dean and Beller Family Professor of Business Law at New York University School of Law. Prior to joining NYU he was a member of the Faculty of Law, University of Toronto. He has also held visiting appointments or fellowships at Clare Hall, Cambridge University; the University of the West Indies, Faculty of Law; and the University of Southern California School of Law. Before entering the academy Professor Davis served as law clerk to the Supreme Court of Canada for the late Mr. Justice John Sopinka and practiced corporate law with Torys. He teaches courses on Contracts, Regulation of Foreign Corrupt Practices, Financing Development, and Law and Development. His research interests include commercial law, economic crime, and, more generally, the relationship between law and economic development. His current research focuses on: the impact of transnational anti-corruption law; quantitative measures of the performance or impact of legal institutions; and, innovation in contracting.

**ELLEN GUTTERMAN** (PhD, Toronto) is Associate Professor of Political Science at Glendon College of York University in Toronto, Canada. Her research and teaching are in the areas of international relations theory and transnational crime and corruption. Her current work focuses on norms, advocacy, legitimacy, compliance, and enforcement in the global governance of corruption. Recent articles appear in the journals *Review of International Studies* and *Foreign Policy Analysis*.

**ALEX HIMELFARB** Alex Himelfarb is a graduate of the University of Toronto where he obtained a Ph.D. in Sociology and was a Professor of Sociology at the University of New Brunswick from 1972 to 1981. In 1981, he joined the Public Service with the Department of the Solicitor General of Canada. He has held a number of positions of increasing responsibility since that time, including Director General, Planning and Systems Group, Planning and Management Branch with the Department of the Solicitor General; Executive Director of the National Parole Board; Assistant Secretary to the Cabinet, Social Policy Development with the Privy Council Office; and Associate Secretary of the Treasury Board. In June 1999, Mr.



Himelfarb became Deputy Minister of Canadian Heritage. He then served as Clerk of the Privy Council and Secretary to the Cabinet from May 2002 until March 2006 when he was nominated as Ambassador of Canada to the Italian Republic with concurrent accreditation to the Republic of Albania and the Republic of San Marino, and as High Commissioner for Canada to the Republic of Malta. Since being appointed Director of the Glendon School of Public and International Affairs in September 2009 (2009-2014), Dr. Alex Himelfarb has guided the School's research capacity and its professional development programming, while strengthening the interface between the School and the public sector. Dr. Himelfarb leads the Centre for Global Challenges which stresses the interplay of domestic and global issues, while chairing and serving on a number of voluntary sector boards.

**JOHN IBBITSON** graduated with an M.A. in journalism from the University of Western Ontario in 1987. One year later he joined the Ottawa Citizen where he worked as a city reporter and columnist. He covered Ontario politics from 1995 to 2001, working for the *Ottawa Citizen*, *Southam News*, the *National Post* and *The Globe and Mail*. In August 2001, Ibbitson accepted the post as Washington bureau chief at *The Globe and Mail*, returning to Canada one year later to take up the post of political affairs columnist. He moved back to Washington as a columnist in May 2007, returning to Ottawa as bureau chief in September 2009. In December 10 he became the paper's chief political writer. In that role, he has also frequently appeared on Canadian television news programs as a pundit and political analyst. In January 2014 Ibbitson began a one-year leave of absence from the *Globe*, to serve as a senior fellow at the Centre for International Governance Innovation and to work on a biography of Prime Minister Stephen Harper. He has written five books on Ontario and Canadian politics, *Promised Land: Inside the Mike Harris Revolution* (1997), *Loyal No More: Ontario's Struggle for a Separate Destiny*, *The Polite Revolution: Perfecting the Canadian Dream* (McClelland & Stewart, 2005), *Open & Shut: Why America Has Barack Obama and Canada Has Stephen Harper* (2009), and *The Big Shift: The Seismic Change in Canadian Politics, Business, and Culture and What It Means for Our Future* with Darrell Bricker (2013). His latest young adult novel, *The Landing*, was winner of the 2008 Governor General's Award for English -language, children's literature.

**STANLEY M. MAKUCH**, B.A. (Toronto) 1967, M.A. (Carleton) 1968, LL.B. (Osgoode) 1971, LL.M. (Harvard) 1972, has been a member of the Ontario Bar since 1976. He is currently a partner with Cassels Brock & Blackwell where he is the head of the Municipal Planning Law and Environmental Law Practice Group. Mr. Makuch was Professor of Law and Planning at the Faculty of Law, University of Toronto from 1976 to 1985. From 1981 to 1985, he was also Associate Dean at the Faculty of Law and from November, 1983 to July, 1984 he was Acting Dean. Mr. Makuch is founding editor of the Municipal Planning Law Reports and has written extensively about municipal law matters, including municipal corruption. He is author of *Canadian Municipal and Planning Law*, (Carswell); *Regulation by Municipal Licensing* (University of Toronto Press), and the *Spill's Bill: Duties Rights and Obligations* (Butterworths). He is on Lexpert's list of the best lawyers in Canada.

**FREDERICK T. MARTENS** is the former Executive Director of the Pennsylvania Crime Commission, which was legislated out of business in 1994 for investigating the Attorney General of Pennsylvania. Martens has been involved in investigating organized crime and public corruption in New York, New Jersey and Pennsylvania for fifty years. He was an integrity monitor at the site of the World Trade Center in New York in 2001-2002; investigated fraud and procurement abuse in New Orleans following Hurricane Katrina; and assisted the government of Northern Ireland in establishing an Independent Private Sector Inspector General (IPSIG) to prevent extortion of construction companies by organized crime elements. He is the co-author of *Police Intelligence in Crime Control* (1983); numerous articles in professional journals; has appeared on the History, Discovery, BBC, and A&E channels; and has just finished the manuscript on his most recent book, *We'll Make You An Offer You Can't Refuse: A Primer on Public Corruption Investigations*, which is scheduled for publication later this year---the 20th anniversary of the Crime Commission's demise. He holds two Master's Degrees, one from Fordham University and the other from City University of New York.

**TONITA MURRAY** has spent 40 years in policing starting with the Coordinated Law Enforcement Unit (CLEU) in British Columbia, moving to the Solicitor General Canada and then to the Royal Canadian Mounted Police as a civilian member. She has specialized in organized crime research, police policy analysis, and police leadership and management. During her career in the RCMP she was one of the leaders of organizational change and a Director General of the Canadian Police College. From 2003 to 2013 she worked on Canadian and British funded police reform projects in Afghanistan. Currently, she is a UNODC consultant on police reform in Kenya. She has published on police management and reform, accountability and governance, and the Afghanistan police reform effort. In 2005 she was invested as an officer into the Canadian Order of Merit for the Police Forces (O.O.M).

**MARIANA MOTA PRADO** obtained her law degree (LLB) from the University of Sao Paulo (2000), and her master's (LLM) and Doctorate from Yale Law School (2002 and 2008). She is a member of the board of Transparency International/Canada. She is currently an Associate Professor at the Faculty of Law, University of Toronto. Prior to joining the University of Toronto in 2006, she worked for the Private Participation in Infrastructure Database Project at the World Bank (2004), and was a fellow of the Olin Center for Law, Economics and Public Policy at Yale Law School (2005). During the 2012-2013 academic years she was a visiting researcher at MIT's Political Science Department. A Brazilian national, she regularly teaches intensive courses at Getulio Vargas Foundation in Rio de Janeiro, and collaborates with Brazilian scholars on projects related to institutional reforms in Brazil. Her scholarship focuses on law and development, regulated industries, and comparative law. Her recent publications include a book entitled *What Makes Poor Countries Poor? Institutional Dimensions of Development* (Co-authored with Michael Trebilcock), Edward Elgar (2011).

**POONAM PURI** is one of Canada's most respected scholars and commentators on issues of corporate governance, corporate law, securities law, and financial regulation. She is Professor

of Law and Associate Dean, Research, Graduate Studies, and Institutional Relations at Osgoode Hall Law School, York University. She is also Co-Director of the Hennick Centre for Business and Law, a joint initiative of Osgoode Hall Law School and the Schulich School of Business at York University, and was former Head of Research and Policy at the Capital Markets Institute, Rotman School of Business, University of Toronto. Appointed to York University's Osgoode Hall Law School in 1997, and a recipient of its Teaching Excellence Award in 1999 and 2009, Puri is a prolific scholar who has co-authored/edited three books and written numerous articles, book chapters and reports. She has an LL.B. degree from the University of Toronto and she holds a Master of Laws (LLM) degree from Harvard Law School. Puri is a member of the board of directors of the Greater Toronto Airports Authority and is currently chair of its Corporate Governance and Nominating Committee. Puri also sits on the Board of Governors of Mount Sinai Hospital and is a member of the National Advisory Council for Statistics Canada.

**ADAM RADWANSKI** is The Globe and Mail's Ontario columnist. In that capacity, he has provided breaking news and analysis out of the provincial capital, and in-depth coverage of the province's broader economic and social challenges. Building on his experience covering federal, provincial and U.S. elections, he won widespread acclaim for his innovative coverage of the 2014 Ontario campaign. Prior to joining the Globe in 2007 as a member of its editorial board, he was the managing editor responsible for online services at Maclean's magazine, and before that was a columnist for the National Post and the Ottawa Citizen. A National Newspaper Award winner, Adam got first made his name in journalism as the founder of Canada's first online political magazine. He frequently appears on television and radio programs across the country.

**MICHELLE RATPAN** works as a Litigation Specialist for the Special Litigation Unit in the World Bank's Integrity Vice Presidency (INT). In this capacity, Michelle works as an attorney with several teams of investigators examining allegations of corruption, fraud, collusion, obstruction and/or coercion and bringing these matters before a Sanctions Board within the World Bank. Michelle's work includes investigations in several regions of the world including the Middle East and North Africa, Eastern Europe and Central Asia and South Asia Regions. She has traveled to Russia, Serbia, Moldova, France, Denmark, India and Bangladesh, amongst other countries, as part of INT's investigations. Michelle also acts as legal counsel on behalf of INT at the European Anti-Fraud Office (OLAF), assisting in directing INT's investigative and legal coordination with European counterparts on joint cases.

Prior to joining INT, Michelle worked for the Department of Justice (Canada) as Counsel on behalf of the Attorney General of Canada. Over the course of her five years with the Department of Justice, Michelle's practice included litigation in civil, administrative, constitutional and criminal law. Michelle led complex litigation files and argued cases before the Federal Court and Federal Court of Appeal. As part of larger litigation teams, she acted as Counsel on several cases heard before the Supreme Court of Canada. Michelle is a graduate of McGill University's Faculty of Law in Montreal, Canada where she focused her studies on criminal and international criminal law. She is also a graduate of Georgetown Universities Global Health Law and International Institutions LLM program.

**J. MICHAEL ROBINSON, Q.C.** is counsel in the Toronto office of Fasken Martineau DuMoulin LLP. His practice of 48 years focuses on international business, trade and investment law. His clients often export to and invest in developing and lesser-developed countries, where many encounter corruption in many forms. Mr. Robinson taught his practice specialties as an adjunct professor for ten years, at Osgoode Hall (York University) and Western University Law Faculties. He served as a director of Transparency International Canada for the maximum six year term and continues to work with that Canadian chapter of Transparency International on its committees. Part of his practice is in international public-private partnerships for infrastructure projects in developing countries. Such projects are usually large and vital to such countries. As such, they frequently have brought forth serious corruption issues. There Mr. Robinson's knowledge of and advice on the law and strategies to both avoid and resist corrupt demands have been critical. Mr. Robinson writes and speaks frequently on international corruption and his fields of international trade and investment protection law. A recent example is his co-authorship in Fall, 2013 of the Report for Transparency International and the *United Nations UNCAC Implementation Review Group* on Canada's implementation of the *United Nations Convention Against Corruption*.

**JUAN GABRIEL RONDEROS** holds a law degree and a Tax Specialization from Universidad de los Andes, and an LL.M from Osgoode Hall Law School. Mr. Ronderos' career started in Colombia where he held different law enforcement posts, ranging from front line investigations to commanding a special money laundering investigative task force. After graduating from Osgoode, he worked for KPMG Forensics in Canada and in the United States, where he held the level of director. Moving into international work, in October 2010, he was appointed by the President of the Inter-American Development Bank Group (IDB Group) as the Case Officer. The IDB Group's Case Officer is the first instance of a two-tier Sanctions System that deals with cases of fraud and corruption in Bank-financed operations. Prior to joining the IDB Group, and since 2003, Mr. Ronderos was part of the World Bank's Integrity Vice Presidency (INT), conducting investigations in countries such as India, Bangladesh, and Cambodia, and Leading the Latin America and the Caribbean investigative team.

**DENIS SAINT-MARTIN** is professor in the Department of Political Science at Université de Montréal and associate professor at Sciences Po Paris. He studied at Carleton University and at the Harvard Center for European Studies. He is an expert in comparative public administration and policy. His research focuses on the regulation of ethics in politics, welfare state reform and the role of expertise in policy development. He received various distinctions for his numerous articles and books: the Academy of Management's Best Book Award in 2001; the Herbert Kaufman Award in 1998 from the American Political Science Association, the Jules and Gabrielle Léger Fellowship in 2008 and was a Fulbright Fellow at the Kennedy School of Government in 2004. He worked as a senior policy advisor in the office of Prime Minister of Canada in 2004-05, and was Director of the Montréal European Union Centre of Excellence

from 2007 to 2011. He was recently awarded a SSHRC grant to study the political economy of corruption and transparency in public and private sector organizations in OECD countries.

**JOHN SANDAGE**, Director, Division for Treaty Affairs, United Nations Office on Drugs and Crime (UNODC), Vienna. JD, Yale University Law School. Member of the New York, Washington DC and United States Supreme Court bars. Formerly: Law Clerk for the US Court of Appeals; in private practice for six years with Wilmer, Cutler, Pickering, Hale and Dorr, in Washington, DC and London, specializing in international law and appellate litigation; more than 15 years with the US Department of State in a variety of legal and policy roles, serving in positions focused on Middle Eastern, western hemisphere, United Nations, law enforcement and counter-narcotics affairs, and counter-terrorism and sanctions policy. In 2008, he joined the United Nations Office on Drugs and Crime, where he is currently Director, Division for Treaty Affairs and Officer in Charge, Organized Crime and Illicit Trafficking. As such he is the senior U.N. official responsible for assisting State parties in the implementation of the U.N. Convention against Corruption. Since 2009, he has been concurrently Officer in Charge of the Terrorism Prevention Branch. Has briefed and argued cases on behalf of the US before the International Court of Justice and the Iran-US Claims Tribunal. Former Senior Editor, Yale Law Journal. Author of numerous publications.

**CRAIG SCOTT** is a politician and academic. Formerly a law professor at Osgoode Hall Law and a director of the Jack and Mae Nathanson Centre on Transnational Human Rights, Crime and Security, he had previously been a professor in the University of Toronto Law school from 1989 to 2001. In 2012 he was elected as the New Democratic Party candidate in a federal by-election in Toronto-Danforth. He earned undergraduate degrees from McGill University and from the University of Oxford where he was a Rhodes Scholar. He has a Bachelor of Laws from Dalhousie University and a Masters of Law from the London School of Economics. His academic specialty is international law with a focus on human rights law.

**JULIAN SHER** is the Senior Producer of Canadian Broadcasting Corporation's program, the fifth estate, Canada's premier investigative TV show. He has also been an investigative journalist for Canada's two leading newspapers, The Toronto Star and the Globe and Mail and the author of six widely-acclaimed books. His writings have appeared on the front page of the New York Times, the cover of Maclean's magazine in Canada and the Walrus.

He has written extensively about organized crime and corruption and frequently appears as a commentator on network television and radio. He has twice won the Arthur C. Ellis award given by the Crime Writers of Canada for the Best True Crime Book of the Year. In 2006, he directed a New York Times-CBC TV investigation called "Nuclear Jihad" which won the Alfred I. duPont-Columbia University Award, the broadcast equivalent of the Pulitzer Prize.

Julian has been active in media and human rights issues and he sits of the Ethics Committee of the Canadian Association of Journalists. He is the former president of the Canadian Association of Journalists and is a current member of the advisory board of the Canadian Journalists for Free Expression, which monitors press freedoms around the world.

**FRANÇOIS TANGUAY-RENAUD** holds degrees in both civil and common law from McGill University, where he was both a Loran Scholar and a Greville-Smith Scholar. He also studied at the National University of Singapore, and completed his graduate work (BCL, MPhil, DPhil) at the University of Oxford, where he was in turn a Rhodes Scholar, holder of the Studentship of the Centre for Ethics and Philosophy of Law, as well as doctoral fellow of the Fonds québécois de la recherche sur la société et la culture (FQRSC) and of the Social Sciences and Humanities Research Council of Canada (SSHRC). He started his association with Osgoode in 2006 when he came as a visiting scholar to help redesign the mandate of the Nathanson Centre. He served as Associate Director of the Centre from July 2009 to July 2012, and has been its Director ever since. His current academic interests span a wide range of subject areas viewed mostly through the lens of analytical legal theory. He is editor (with James Stribopoulos) of a collection entitled *Rethinking Criminal Law Theory: New Canadian Perspectives in the Philosophy of Domestic, Transnational, and International Criminal Law* (Hart Publishing, 2012), and has published articles in leading journals such as *Ethics*, *Legal Theory*, *Res Publica*, *Law and Philosophy*, and *Criminal Law and Philosophy* as well as in many leading edited collections. He is currently working on a SSHRC-funded book project on *States as Wrongdoers in Morality and Law*.

**GUS VAN HARTEN** is an associate professor at Osgoode Hall Law School where he teaches Administrative Law, International Investment Law, and Governance of the International Financial System. He was previously on faculty at the London School of Economics. His first book, *Investment Treaty Arbitration and Public Law* (OUP, 2007), presents a public law critique of investment treaty arbitration and proposes the establishment of an international investment court to ensure independence and accountability in the international adjudication of regulatory disputes between states and investors. His second book, *Sovereign Choices and Sovereign Constraints: Judicial Restraint in Investment Treaty Arbitration* (OUP, 2013), is an empirical study demonstrating how rarely investment treaty arbitrators signal restraint, in the manner of domestic and international courts, for reasons of relative institutional accountability, capacity, or suitability. More broadly, his research examines international and comparative aspects of public law including procedural aspects of public inquiries and national security confidentiality. He worked previously on the Arar Inquiry, on the Walkerton Inquiry, and as a law clerk at the Ontario Court of Appeal.

**CYNTHIA WILLIAMS** is Professor of Law and Osler Chair in Business Law at Osgoode Hall Law School, where she is also the co-director of the Hennick Centre for Business and Law. Professor Williams writes in the areas of securities law, corporate law, corporate accountability, comparative corporate governance and regulatory theory, often in interdisciplinary collaborations with professors in anthropology, economic sociology, and organizational psychology. Her recent book *The Embedded Firm: Corporate Governance, Labor, And Finance Capitalism*, co-edited with Prof. Peer Zumbansen, was published in 2011 by Cambridge University Press and was featured at the Society for Socio-Economics (SASE) Annual Conference in 2012 at MIT. Professor Williams also engages in policy work through her board membership in the Network for Sustainable Financial Markets, a think-tank of academics and financial market participants; and as a member of the U.S. Environmental Protection Agency's Environmental Finance Advisory Board.

# ABSTRACTS

## **Margaret Beare:**

### **CORRUPTION - THE GREAT FACILITATOR OF ORGANIZED CRIME**

Paper will trace the role played by corruption in a wide array of organized, and transnational crimes in Canada. While acknowledging the current Quebec Carbonneau commission, paper looks broader at corruption as a facilitator/ 'enabler' or as an actual 'partner' in the criminal conspiracies. In many cases, as in Quebec, there is a sense that 'everyone knew' about the corruption for decades and nothing was done—paper explores some of the theories that explain our tolerance of corruption and on occasion the less than admirable reasons why corruptions are exposed.

## **Milos Barutciski:**

### **THE EVOLUTION OF INTERNATIONAL ANTI-CORRUPTION LAW: CANADA'S PLACE IN A GLOBAL STORY**

Two decades ago, both government and business attitudes toward corruption in international jurisdictions spanned from resigned tolerance to cynical opportunism. Both governments and businesses accepted that corruption was deeply rooted in many countries and either worked with the system to get along or exploited it to competitive advantage. The Cold War reinforced this balance for almost 50 years. Beginning in the 1990's, parallel developments in the public sector, civil society and business provoked a growing shift away from the widespread tolerance of international corruption.

The last 15 years have witnessed the conclusion of several international conventions aiming to address corruption in international business. These conventions have in turn led to the adoption of more robust anti-corruption laws in all OECD countries and a growing number of developing countries. More recently, enforcement of international anti-corruption laws has dramatically increased in many countries, including Canada. This paper traces the evolution of international anti-corruption law and Canada's response to that trend. It considers both, public and private sector reactions, the risk factors that confront corporations doing business in countries with governance and corruption challenges and responses to those challenges.

## **Kevin Davis:**

Accurate data is essential to understanding both the magnitude of the problem presented by corruption or the effectiveness of anti-corruption law. Drawing on recent literature "governance indicators", this presentation will examine the challenges inherent in measuring both the extent of corruption and the quality of anti-corruption law.

## **Ellen Gutterman:**

The US Foreign Corrupt Practices Act of 1977 (FCPA) is experiencing an unprecedented moment. In 2010, corporations paid \$1.8 billion in fines, penalties, and disgorgements under the

FCPA, the most ever recorded in this controversial Act's history, and half of all criminal division penalties paid to the United States Department of Justice. To date, active enforcement of the FCPA continues unabated. Record fines, enforcement actions against individuals, an increase in the number of civil and criminal actions, and strengthened enforcement of similar rules in other countries indicate a heightened emphasis by the US government on controlling foreign corrupt practices. What explains this recent pattern of enforcement? This paper examines evidence in the public record (investigations, prosecutions, legal decisions, media reports) of FCPA enforcement, and considers both domestic and systemic explanatory factors. The analysis also evaluates FCPA enforcement as an instance of (1) extra-territorial jurisdiction in international law and (2) the exercise of American power within a norm-driven international prohibition regime (alongside such others as the international regimes against human trafficking, money laundering, and illegal drugs).

**John Ibbitson:**

**THEY DON'T MAKE SCANDAL LIKE THEY USED TO**

Ottawa is clean as a whistle, at least if you compare today to the past. The Customs Scandal and the Beauharnois scandal revealed deeply corrupt collusion among government officials, corporate interests and organized crime. But each scandal, over time, generated safeguards to prevent its repeat. The decline of patronage, the arrival of auditors general and new laws limit the ability of politicians and public servants to succumb to temptation. Yet the public appetite for outrage remains unslaked. The result is a Senate expenses scandal laughable in its pettiness that nonetheless threatens to defeat a government. Think of it as good news.

**Stanley Makuch**

This paper will discuss the importance of rule of law values such as predictability, certainty, equality, and procedural safeguards in the controlling of corruption at the municipal level of government and how those values are being replaced by political/economic values such as efficiency, discretion, responsiveness and need. Particular attention will be placed on how this change in values leads to corruption and the abuse of power in planning and other decisions made by municipal governments.

**Frederick T. Martens:**

Fred Martens will provide a detailed analysis of the former Pennsylvania Crime Commission's (U.S) investigation of Ernest J. Preate, Jr., the former Attorney General of Pennsylvania who was the subject of a racketeering investigation that resulted in his imprisonment for 14 months. Martens will demonstrate how Preate used the Legislature, the media, and his political and legal surrogates to thwart the investigation of the extortion of video poker vendors for campaign contributions. Unlike most public corruption investigations, Preate was a sitting Attorney General who had the power to investigate and prosecute his political adversaries. Had it not been for the election of a new President, William J. Clinton, and the appointment of a new U.S. Attorney, Preate would have been a likely Governor and candidate for national office.



**Tonita Murray:**

Through the analysis of three cases of massive financial fraud perpetrated by the close relatives and friends of politicians in power, I will trace the nexus between political corruption, faltering economies and retarded development in Kenya and Afghanistan. None of the perpetrators were brought to account, but all three cases brought near collapse to the banking systems and economies of the two countries, and induced the international community to cut off development funds. As a consequence social and economic development programmes that benefit the poor were stopped or underfunded, giving a new meaning to the idea of 'trickle-down economics'.

**Mariana Mota Prado:**

There has been significant progress associated with the systems of oversight and investigation of corruption in Brazil, but very little progress associated with punishment. This can be potentially explained by the fact that there is institutional multiplicity (i.e. duplication) in oversight and investigative functions, while at the punishment stage, a single institution – the judiciary – has authority (Prado & Carson, 2014). It is in this context that Brazil has enacted legislation to punish foreign corrupt practices. Interestingly, the Anti-Corruption Law enacted in August 2013 has creatively used institutional multiplicity in an attempt to circumvent the well-known problems that plague the Brazilian anti-corruption system. While this looks promising, whether it will work or not, remains to be seen.

**Poonam Puri:****ENFORCEMENT EFFECTIVENESS AND THE DEVELOPMENT OF INTERNAL CONTROLS TO COMBAT CORRUPTION OF FOREIGN PUBLIC OFFICIALS UNDER CANADIAN AND AMERICAN LEGISLATION**

This paper compares public and private enforcement mechanisms under the United States FCPA and Canadian CFPOA and the enforcement intensity achieved under these two regimes, while considering the different business climates and capital markets in each jurisdiction. In doing so, it examines whether Canada's current whistle-blower protection regime provides adequate protection and incentives for employees to disclose alleged corporate wrongdoing. In addition, it examines the potential adverse consequences of providing incentives to whistle-blowers, namely that employees are encouraged to address instances of wrongdoing outside of the corporate structure thereby diminishing the incentive for robust internal compliance programs.

**Adam Radwanski:**

The temptation and growing inclination to view all politicians as untrustworthy, if not outright corrupt, at once treats them unfairly and lowers the bar in a way that perversely creates a sort of leniency. The perception that "These guys are all the same" discourages good people from seeking office, while allowing those who abuse their offices to skate by without standing out as

much as they should. Difficult though it may be with limited resources in a 24/7 news cycle, it's incumbent on the media to be more diligent in rooting out truly egregious behaviour, rather than going for quick and easy hits that play to the public's worst preconceptions.

**Michelle Ratpan:**

Michelle's presentation will cover the investigative and sanctions process of the World Bank's Integrity Vice Presidency (INT). Michelle will discuss the sanctionable practices that fall within the jurisdiction of the INT, which include corruption, coercion, collusion, fraud and obstruction. This will be followed by an examination of several case studies in these areas.

**J. Michael Robinson:**

International corruption prevention lacks prevention and sanction tools on the demand side. In many countries, mainly developing, the demands are not frequent but virtually the norm. Development requires financing. Public-private projects, increasing in frequency, are often financed by the "Big Five" international development banks (World Bank leading) and by scores of the Export Credit Agencies of private sector suppliers' countries. These have focused on anti-corruption controls but supply side only. The Five IFI's have, since 2010, mutually recognized the debarment regimes of each other. That is good. But it is inefficient. Corruption on both demand and supply sides must be better controlled and sanctioned by the financiers and citizen action in corrupt countries. His presentations emphasize his practice through case studies and his advice to business clients.

**Juan Ronderos:**

Multilateral Development Banks (MDBs) have been fighting corruption in development projects through their own investigative units and administrative adjudicative systems, by debarment entities and individuals from participating in Bank-financed operations. In 2010, the MDBs signed a Cross Debarment Agreement allowing the recognition of debarment decisions across MDBs, as in the case of SNC Lavalin—Canadian firm debarred for 10 years. This investigation was undertaken in collaboration with Canadian authorities, a model that is emerging in international corruption investigations. This paper will explore why corruption in international development requires collaboration from local and international investigative agencies to achieve effectiveness and prevent further leakage of international aid.

**Julian Sher:**

**INVESTIGATIVE JOURNALISM: OUR WATCHDOG ON CORRUPTION**

It was Radio-Canada's investigative show Enquete that first began probing organized crime connections in the Quebec construction industry - which led to the downfall of the government and the Charbonneau commission. Canadian journalists have probed the corruption allegations against SNC-Lavalin around the world; the recent controversies swirling around Ontario Liberals and the historical scandals of Mulroney's Conservatives; and the business connections of

mayors in Toronto and Brampton. But with cutbacks and crisis hitting all media, can the public keep relying on investigative journalists to be society's watchdogs?

**Denis Saint-Martin**

**SYSTEMIC CORRUPTION IN AN ADVANCED WELFARE STATE: LESSONS FROM THE QUEBEC CHARBONNEAU INQUIRY**

Scandinavian countries always figure at the top of the least corrupt countries in the world in Transparency International's perceptions of corruption index. In social science research systemic corruption is typically associated to developing nations and not expected to be found in advanced welfare states. How, in this context, can Québec be the "most corrupt province" in Canada and at the same time the "little Sweden of North America"? How to explain this paradox? This is the question that this paper will investigate by confronting theories of corruption to the evidence of "private abuse of public power" uncovered by the Charbonneau commission (officially known as the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry).

**Gus Van Harten:**

**CORRUPTION AS A FACTOR IN THE RESOLUTION OF INVESTOR-STATE DISPUTES**

The paper would survey investment treaty arbitration cases in which corruption was apparently raised as an issue, for example in relation to the investor's approval to operate in a country, and how the issue was addressed by the tribunal. More broadly, the paper will examine challenges that corruption allegations raise to this form of adjudication, especially in light of its exceptional use, primarily, of the remedy of market-based compensation of foreign investors using public funds where a tribunal concludes that the state acted unlawfully in its regulatory capacity.

**Cynthia A. Williams:**

**THE EFFECT OF CORPORATE CULTURE ON COMMITMENT TO LAW**

Many theories of regulation assume a picture of the person as self-interested, and of firms (and persons) as calculating expected penalties for violations in determining whether to comply with law or not. A fuller, more psychologically-informed view of the person and of organizational psychology, leads to different mechanisms to encourage commitment to and engagement with law. This paper discusses how a repertoire of such psychologically-informed mechanisms might reduce the incidence of bribery and other forms of corruption.