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Presenting the Fleming Award to Justice Allen Linden at Pepperdine University School of Law

Stephen D. Sugarman*

It was a great pleasure to come to Pepperdine University on April 21, 2005 to present the John G. Fleming Award in Torts to Professor Allen Linden, Canada's leading torts scholar and a justice on the Canadian Federal Court of Appeal.

This award was created in Professor Fleming's name after his death in 1997. Fleming had an incredibly dynamic personal history. He was born in Germany and educated at Oxford University in England. Beginning in 1956, he served as Dean of the newly-created law faculty at the Australian National University, and it was in Australia where he first published his famous torts treatise that, now through many editions, synthesizes the common law of England, Australia, New Zealand, Canada, and the United States. In 1960, Fleming migrated to his fourth home nation when he joined U.C. Berkeley School of Law (Boalt Hall). He was editor-in-chief of the *American Journal of Comparative Law* for more than two decades, and in his era he was considered the world's most outstanding comparative law torts scholar.

Because of Fleming's reach, the committee selected to award the Fleming prize has a decidedly international flavor. It is currently comprised of Justice Michael McHugh, who sits on the High Court of Australia; Lord Cooke of Thorndon, widely regarded as New Zealand's greatest jurist and a member of the House of Lords; Professor Basil Markesinis, from the law faculty at University College London; and myself, as the representative from Fleming's home school.

The Fleming prize is presented every two years, and this year marks the third award. The first recipient was Professor Harold Luntz, Australia's senior torts scholar—himself a transplant from South Africa. The second recipient was Professor Guido Calabresi, former Dean of Yale Law School and currently a federal judge (yet another immigrant, who came to the U.S.

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from Italy). The third winner is Professor Allen Linden.

Professor Linden was called to the Canadian bar in 1960 and appointed Queen's Counsel in 1974. As a lawyer, his work included assisting Canadian children who were victims of thalidomide. He began his service as a professor in 1961 at his alma mater, Osgoode Hall Law School, where he taught until 1978. Professor Linden was then appointed to serve as a justice on the Supreme Court of Ontario, where he sat until 1990. Today, he serves in the appellate division of the Federal Court of Canada. His years on the bench have also included serving as the President of the Law Reform Commission of Canada between 1983 and 1990.

Like Fleming, Professor Linden has made a special mark on the law of torts through his treatise. Long a proponent of a distinctive Canadian approach to tort law, Linden initially published *Canadian Tort Law* in 1972. It was Canada's first real textbook on torts and, now in its seventh edition, it remains the leading volume in the field.

In addition, more than three decades of law students throughout Canada have studied torts from Linden's important casebook, *Canadian Tort Law: Cases, Notes, and Materials*, now in its twelfth edition.

Recently, a new book, *The Joy of Torts: Essays in Honour of Mr. Justice Allen M. Linden*, has been issued in his honor, to which torts scholars, mostly Canadian, have contributed.

Professor Linden is especially known for his view that tort law serves an "ombudsman" function, bringing social attention to important problems that might otherwise not be managed by the government, and prompting public agencies to address a wider range of injuries. Although a strong believer in the public benefits achieved by tort law, Linden has also championed tort reforms that would make the law more efficient, rational, and humane. For example, early in his career he authored a study of compensation for victims of automobile accidents that contributed to the adoption of Ontario's privately-operated automobile no-fault plan.

Professor Linden's transnational connection beyond Canada is primarily with the United States. Indeed, it was a special pleasure to be given the opportunity to present this award in light of Linden's connections to Berkeley. He was a graduate student of Fleming's in the 1960s when he earned his LL.M. and J.S.D. degrees. Much later, in 1988, Linden co-edited *Torts Tomorrow: A Tribute to John Fleming*. This book includes essays by torts scholars throughout the common law world. Professor Linden was recently elected to the American Law Institute, where he has become actively involved in the revision of the Restatement of Torts (Second), originally drafted by one of his Berkeley mentors, Dean William Prosser. As a further American connection, in recent years, Professor Linden has had the great pleasure of teaching tort law classes at Pepperdine University School of Law.

Hence, as was true of the two previous winners of the Fleming prize as well as Fleming himself, the third winner is an exceptionally international giant in the law of torts—Professor Allen Linden.

