

The David Asper Centre FOR CONSTITUTIONAL RIGHTS

Annual Report 2008-2009



Realizing constitutional rights through advocacy, education and academic research

Table of Contents

Message from the Executive Director -----	1
About the Asper Centre -----	3
About David Asper -----	4
The Strategic Plan-----	5
The Centre's Advisory Group -----	6
Accomplishments of the Past Year -----	8
Workshops and Conferences -----	8
Advocacy and Litigation -----	10
Website-----	10
Clinical Legal Education -----	11
Student Engagement -----	12
Asper Centre in the News -----	13
Spotlight on Faculty Research -----	14
The Upcoming Year-----	15
Students, Alumni and Friends of the Centre-----	16

From the Executive Director

The Year in Review

On September 5, 2008, the David Asper Centre for Constitutional Rights began an eventful inaugural year at an event highlighting the *Charter's* first 25 years: *Litigating the Charter in the 21st Century*. Prominent members of the constitutional bar offered their views on the impact that they hoped the Centre might make on constitutional advocacy in Canada. As the inaugural executive director I was pleased and somewhat overwhelmed by the interest, support and high expectations for the Centre. I am pleased to say that the Centre's activities in its first year illustrate its ability to respond to these expectations and lead the way, with the support and assistance of the Centre's impressive Advisory Group and members of the constitutional bar.



We followed up with an exciting workshop held on the day after the decision of the Governor General to prorogue Parliament. With standing-room only attendance, I was able to see first hand the potential for the Centre to shape opinion in the emerging constitutional issues of the day. We also plan to address an issue that has been much talked about through both a well-attended workshop and a planned symposium for the fall – the role of interveners in public interest litigation. Coincidentally, the Centre has been granted standing in its first case before the Supreme Court of Canada – no small feat for a Centre that is not yet a year old! We are grateful to the Criminal Lawyers' Association for partnering with us in the case of *Conway v. Her Majesty the Queen*, which addresses the constitutional jurisdiction of Review Boards under the *Criminal Code*. We will continue to look for similar opportunities to target cases that address access to constitutional rights issues in the upcoming year.

I am also pleased to report that over the course of the summer, with the assistance of our summer research student, Kerri Lui, we submitted our first policy brief. We were invited by the Information and Privacy Commissioner/ Ontario to make submissions on her investigation into the allegations of juror background checks. With Professor Lisa Austin in the lead, we presented a brief that analyzed the potential breaches of the constitutional right to privacy of the prospective jurors and called for a public inquiry or broad-based investigation that addressed the administration of justice concerns that have been raised.

I am also particularly proud of our beautiful new website. Designed by Chad Holden of the University's Office of the Chief Information Officer and with the help of part-time summer law student, Brauna Doidge, we have managed to provide access to Supreme Court facts from past constitutional cases, faculty research and summaries of appellate level cases from across the country on a site that is easy to navigate. We will continue to look for innovative ways to use

our website to make available the current and sophisticated research of the faculty, as well as essential resources for academics and practitioners in constitutional law.

A major priority for the first year of the Centre was to commence the clinical legal education course on constitutional advocacy. Students worked on exciting projects that allowed them opportunities to participate in various forms of advocacy affecting constitutional rights. The projects ranged from public legal education to innovative litigation to further the rights of marginalized members of our community. We can now say that we have our first five alumni of the program with most going onto articling and clerking opportunities where the skills learned in our clinic will be invaluable.

I have spent a significant amount of time over the past year charting the Centre's role in the coming years. At a dinner at the start of the school year prominent members of the constitutional bar and key faculty members shared their hopes for the Center. I followed this with individual consultations that also included organizations engaged in human rights work on behalf of marginalized communities. I surveyed law students on how they would like to participate in the Centre in the future and interviewed the students who had attended the clinic. The culmination of these consultations was a strategic planning session with our Advisory Group and the drafting of a strategic plan that will guide our work over the next five years. Our mission statement, "Realizing constitutional rights through advocacy, research and education", establishes the three pillars of our work and provides a framework to integrate these areas to promote access to constitutional rights through scholarship and public education and to establish the premier educational setting to train the next generation of constitutional lawyers.

Over the coming year I am looking forward to engaging with more students through voluntary working groups and an increase in the enrolment in the clinical legal education course. The Centre will also engage in more litigation at the Supreme Court with opportunities for students to participate in these cases. The Centre will assist in the organization of the Wilson Moot which focuses on s.15 of the *Charter* and will continue on its very successful path on the forefront of constitutional rights discourse. I plan to engage more faculty members in the various projects of the Centre over the coming year and to find opportunities to harness the incredible talent of the faculty in the advocacy projects, workshops and conferences we will be hosting in the coming months.

I am truly excited about the role that the Centre will play in the coming years.



Cheryl Milne
Executive Director

About the Asper Centre

The David Asper Centre for Constitutional Rights is a centre within the University of Toronto, Faculty of Law devoted to advocacy, research and education in the area of constitutional rights in Canada. The Centre houses a unique legal clinic that brings together students, faculty and members of the legal profession to work on significant constitutional cases. Through the establishment of the Centre the University of Toronto joins a small group of international law schools that play an active role in constitutional debates of the day. It is the only Canadian Centre in existence that attempts to bring constitutional law research, policy, advocacy and teaching together under one roof. The Asper Centre for Constitutional Rights situates the University of Toronto at the leading edge of constitutional law studies internationally and secures Canada's place in the international dialogue about the limits of constitutional rights.

Creation and Funding

David Asper, in a speech to the Canadian Association of Journalists, May 12, 2006, stated, "There has to be a way that we can level the playing field with respect to fighting for our Charter rights [other] than the present system, where no one individual, except the most wealthy and foolhardy, could stand up and defend themselves." Motivated by the elimination of funding for the federal Court Challenges Program, David Asper believed that steps needed to be taken to enhance access to justice for people whose constitutional rights have been violated.

The David Asper Centre for Constitutional Rights was established by his generous gift to the Faculty of Law at the University of Toronto in the amount of \$7.5 million. Half of the gift is an endowment to provide the basic operational support leading to the creation of innovative programs, including workshops, fellowships, student internships and a path-breaking constitutional litigation clinic. The remaining gift will go toward the construction of offices, teaching spaces and meeting rooms associated with the Centre in the proposed new Faculty of Law building.

Through its first year, the operation of the Centre has also been generously supported through the general grant from the Law Foundation of Ontario to the Faculty of Law and through the operating budget of the Faculty of Law, University of Toronto.

About David Asper

David Asper David Asper is a business executive and Assistant Professor of Law, Robson Hall Law School at the University of Manitoba. A member of the Manitoba and Ontario Bar, he left the formal practice of law in 1992 after successfully serving as co-counsel in the David Milgaard wrongful conviction case and winning Mr. Milgaard's freedom before the Supreme Court of Canada. Asper earned a Master of Laws from the University of Toronto Faculty of Law in 2007. He joined CanWest Global in 1992 and has served as a member of CanWest's corporate development and operations team on many domestic and international projects. In addition Asper oversees the Canwest corporate communications groups based in Winnipeg and Toronto, including its highly successful philanthropy and corporate citizenship programs.



In 1997, he was appointed to CanWest's Board of Directors and has also served on several subsidiary Boards in Canada and abroad. From 2003 until 2009 Asper served as Chair of the National Post where he maintained corporate responsibility for business strategy development as well as overall editorial standards in the company's publishing division. In 2007 Asper became a founding investor in Canterbury Park Capital, a private equity firm, where he serves on the investment committee and as a Director of Allegro Media Group, an investee company. He is also Executive Chairman of Creswin Properties which is a private real estate investment company. A past Director and Chair of the Winnipeg Blue Bombers, Asper is also an Honourary member of the Board of Directors of the Canadian Friends of Simon Wiesenthal Centre; Vice Chair of the Pan Am Clinic Foundation in Winnipeg; and recently retired after serving several years as a Trustee of St. Johns Ravenscourt School. Asper also served as co-Chair of the 2006 Grey Cup Festival in Winnipeg, for which he was recognized by Destination Winnipeg with an Award of Distinction, and was also honoured by the Canadian Football League with the Commissioner's Special Award. He is a member of the Chief Justice of Canada's Advisory Board of the Canadian Judicial Council and was appointed by the Government of Ontario to the Governing Council of the University of Toronto where he served until his recent academic appointment at the University of Manitoba. Mr. Asper is also a member of the Dean's Advisory Board at the University of British Columbia Innocence Project. In July 2008 Asper was recognized with the Consumers Choice Award Businessman of the Year in Winnipeg. Also in September 2008, he received an Arbor Award from the University of Toronto recognizing his volunteer efforts toward promoting and improving the University experience. Asper is the founding Chair of The Daremax Foundation, which supports many local and national philanthropic projects. These include leadership giving to the United Way, the University of Manitoba Bison Football program and Asper has established a Centre for Constitutional Rights through a multi-million dollar gift to the University of Toronto Faculty of Law. Married to Ruth with three children, Asper lives in Winnipeg.

The Strategic Plan

The Centre's strategic plan was created with input from numerous consultations conducted over the Centre's first year of operation. The Executive Director met individually with members of the constitutional bar and the NGO community. A working dinner was held in early September 2008 with members of the constitutional bar and the constitutional faculty to elicit ideas for the operation of the Centre. Over 60 students were consulted through a questionnaire on their ideas for participation in the Centre and all of the students who were part of the initial clinical legal education course were interviewed. On April 23, 2008, the Executive Director led a strategic planning session with the Advisory Group with student participation and input from another program director within the faculty. The goals set out in the plan are the culmination of this participatory process and will establish the Centre's priorities for the next 5 years.

Vision

Sophisticated awareness, understanding and acceptance of constitutional rights in Canada.

Mission

Realizing Constitutional Rights through Advocacy, Education and Academic Research.

Values




The Centre's ideals are those of the Canadian *Charter of Rights and Freedoms*. It will be guided by the following values in its work:




- **Excellence:** the Centre is committed to high quality academic research, intellectual engagement, and intellectual rigour as the foundations for all of its work.
- **Independence:** the Centre's location within an academic institution provides the basis for trust, integrity, and intellectual freedom and diversity.
- **Diversity:** the Centre is committed to diversity in its interaction with community organizations and groups and to intellectual diversity in its work and approach to legal analysis.
- **Innovation:** the Centre seeks to shape the direction of constitutional advocacy, to be flexible in order to respond to emerging constitutional issues, and to use the *Charter* to transform Canada's legal and policy landscape.
- **Access to Constitutional Rights:** the Centre seeks to promote access to constitutional justice and human rights for vulnerable individuals & groups.

Goals

- **Advocacy:** To make a significant and scholarly contribution to the quality of constitutional rights advocacy in Canada.
- **Research:** To be the expert resource on constitutional rights in Canada.
- **Education:** To increase awareness, understanding and acceptance of constitutional rights in Canada.

The Centre's Advisory Group

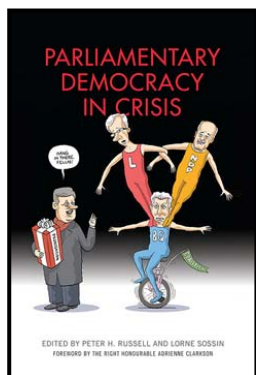
Current Members	
	<p style="text-align: right;">Professor Sujit Choudhry, Chair</p> <p>Sujit Choudhry holds the Scholl Chair and is the Associate Dean of the First Year Program. His research and teaching interests focus on Constitutional Law and Theory and Health Law and Policy. Professor Choudhry has edited several books, including <i>Constitutional Design for Divided Societies: Integration or Accommodation</i> and <i>The Migration of Constitutional Ideas</i>, and has published articles in journals such as the <i>Canadian Journal of Law and Jurisprudence</i>. He is currently working on a book, <i>Rethinking Comparative Constitutional Law</i>. Professor Choudhry also sits on the Board of Editors of the <i>International Journal of Constitutional Law</i>, the Editorial Board of the <i>Constitutional Court Review</i> and the Board of Directors of Legal Aid Ontario.</p>
	<p style="text-align: right;">Professor Kent Roach</p> <p>Kent Roach holds the Prichard-Wilson Chair of Law and Public Policy. His research interests include the comparative study of miscarriages of justice and comparative judicial review. Professor Roach's books include <i>Constitutional Remedies in Canada</i>, <i>Due Process and Victims' Rights: The New Law and Politics of Criminal Justice</i>, <i>The Supreme Court on Trial: Judicial Activism or Democratic Dialogue</i>, <i>September 11: Consequences for Canada</i> and <i>The Charter of Rights and Freedoms 3rd ed</i> (with Robert Sharpe). He has written over 110 articles and chapters published all over the world. Professor Roach also participated in the Ipperwash and Goudge inquiries and served as counsel for Aboriginal and civil liberties groups in several Supreme Court cases.</p>
	<p style="text-align: right;">Professor Lorne Sossin</p> <p>Lorne Sossin is a Professor at the Faculty of Law and the Director of the Faculty's Centre for the Legal Profession. His teaching interests include administrative law, civil litigation and ethics & professionalism. Professor Sossin has authored over 50 articles and books, including <i>Boundaries of Judicial Review: The Law of Justiciability in Canada</i>, <i>Public Law and Access to Care</i>, <i>Access to Justice: The Legal Debate on Private Health Insurance in Canada</i>. He has been commissioned to write papers for the Gomery Inquiry, Ipperwash Inquiry, the Panel on the Role of Government, the Expert Commission on Pensions and the Goudge Inquiry. Professor Sossin also serves on the Boards of the Law Foundation of Ontario and Pro Bono Law Ontario.</p>

	<p style="text-align: right;">Professor Lorraine Weinrib</p> <p>Lorraine Weinrib is a Professor at the Faculty of Law and the Department of Political Science. Her teaching interests include the <i>Charter</i>, constitutional litigation and comparative constitutional law. She has published several articles on various topics, such as the interpretation of sections 1 and 33, the theoretical dimension of the Supreme Court's <i>Charter</i> jurisprudence and the study of leading cases (e.g. <i>Morgentaler</i>, <i>Ford</i>, <i>Keegstra</i>, <i>Rodriguez</i>). Professor Weinrib is currently studying the legitimacy of the post-WWII model of judicially enforced rights-protection and is working on a monograph entitled <i>The Supreme Court of Canada in the Age of Rights</i>. She also writes a monthly column on constitutional issues in the <i>Law Times</i>.</p>
	<p style="text-align: right;">Professor Ed Morgan</p> <p>Ed Morgan is a Professor of Law and the newest member of our Advisory Group. He was called to the Ontario bar in 1988. He teaches in the fields of international law and constitutional law. He has a B.A. from Northwestern University, an LL.B. from the University of Toronto and an LL.M. from Harvard Law School. He was a law clerk to Madam Justice Bertha Wilson of the Supreme Court of Canada in 1984-85. He started teaching in 1986, and from 1989-1997 practiced civil litigation at Davies, Ward & Beck in Toronto. He has written <i>International Law and the Canadian Courts</i> (Carswell, 1990) and <i>The Aesthetics of International Law</i> (U. Toronto Press, 2007). He has also written numerous law journal articles, case comments, and book chapters dealing with international and constitutional law issues. He is a regular contributor to national newspapers on issues of international and constitutional law.</p>
Former Member	
	<p style="text-align: right;">Hon. Justice Michael Code</p> <p>Michael Code was formerly an Assistant Professor at the Faculty of Law and is now a Justice of the Ontario Superior Court of Justice. Previously, Justice Code was a renowned criminal and constitutional lawyer, arguing key <i>Charter</i> cases (e.g. <i>Askov</i>, <i>Swain</i>) in the Supreme Court and the Court of Appeal for Ontario. He also served as the Assistant Deputy Minister, Criminal Law, Ministry of the Attorney General for Ontario. He has also appeared as counsel in the Driskell Inquiry, the "Air India" terrorism trial and on behalf of the Ontario Securities Commission in a series of cases. He has written a book about s. 11(b) of the <i>Charter</i>, entitled <i>Trial Within a Reasonable Time</i>, and has published several articles. Additionally, Justice Code recently concluded a policy review, alongside former Chief Justice LeSage, regarding the topic of long and complex criminal trial procedure. Justice Code chaired the Advisory Group in its first year until immediately before his appointment to the bench.</p>

Accomplishments of the Past Year

Workshops and Conferences

» Constitutional Crisis Workshop Series



On December 4, 2008, Governor General Mich  elle Jean granted Prime Minister Harper's request to prorogue Parliament, narrowly avoiding a confidence motion by the Bloc Quebecois-backed Liberal-NDP coalition. Responding to the public's interest in the issue, the Asper Centre hosted a trilogy of events.

A **panel discussion** was held on December 5 at the Faculty of Law. Cheryl Milne, the Centre's Executive Director, served as moderator. The panelists included David Cameron (Chair of the University of Toronto's Political Science Department), Joe Comartin (NDP MP for Windsor-

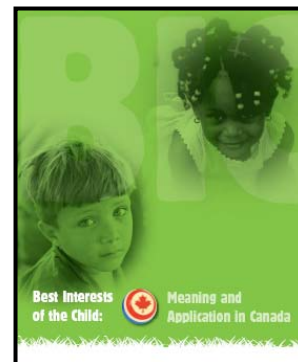
Tecumseh), Bob Rae (Liberal MP for Toronto), former Governor General Ed Schreyer, political science Professor Peter H. Russell, Professor Lorne Sossin and Professor Lorraine Weinrib. The discussion addressed the legal issues that prorogation presented and the constitutional conventions that guide our particular form of Parliamentary democracy. The event was attended by a standing-room only crowd of students, faculty, alumni, members of the University community and the public.

A **follow-up panel discussion** was held on January 13, 2009, featuring Professors Ned Franks, Peter H. Russell and David Schneiderman. It was moderated by lawyer Mary Eberts. The workshop provided an opportunity for thoughtful analysis by leading scholars on the topic of the impact of this decision. The effect of the rhetoric and commentary surrounding the events of December 2008 suggested that we may be losing sight of some of the fundamentals of parliamentary democracy in Canada. This event focused on those principles and put our understanding of the current crisis into the context these principles provide. The discussion addressed the powers of the Prime Minister during this "time-out", comparisons that had been made to the U.S. electoral system and their direct election of a president, and what could be expected of a coalition government, with reference to international examples of such coalitions.

The third event was a **book launch**, which celebrated the publication of a timely book entitled *Parliamentary Democracy in Crisis* and edited by Professor Lorne Sossin and Professor Emeritus Peter Russell. The panel, moderated by Professor Sujit Choudhry, included constitutional scholar Peter Hogg, David Cameron, Michael Valpy and Barbara Cameron. Closing remarks were made by the Honourable Adrienne Clarkson, former Governor General, on her views of the role of the Governor General in Canadian democracy. We also took the opportunity to celebrate the Asper Centre's first year and its many accomplishments.

» **Conference: Best Interests of the Child**

On February 27 and 28, 2009, the Asper Centre and the Faculty of Law hosted a bilingual **conference on the Best Interests of the Child**, a fundamental principle in the United Nations *Convention on the Rights of the Child*. The conference aimed to build a more common understanding of the principle and improve implementation of the Convention in Canada. The conference was attended by over 180 participants from across Canada and across disciplines. Conference partners included UNICEF Canada; Canadian Coalition for the Rights of Children; Justice for Children and Youth; and the International Bureau for Children's Rights. Funding was provided by Canadian Heritage, Human Rights Program; Justice Canada; Canadian Heritage, Office Languages Support Program; and the Faculty of Law.



The first day consisted of five panels on (I) Meaning and Interpretation of the Best Interest Principle, (II) Best Interests and Participation, (III) Best Interests and Other Interests (Parental Rights, Culture, Public Security), (IV) Best Interests Applied to Children as Group and (V) Best Interests and Canada's Constitution. On the second day, two rounds of workshops were held on topics such as child welfare, youth justice and aboriginal children. Professor Carol Rogerson assisted in planning the event and moderated the panel on the constitution. She also facilitated the workshop on family law on the second day. Cheryl Milne spoke on the constitutional panel on the issue of the best interests and children's constitutional rights. She also facilitated panels on aboriginal children and child welfare on the second day. The input of the participants at this conference culminated in a June 2009 report released by the Canadian Coalition for the Rights of Children, entitled *The Best Interests of the Child: Meaning and Application in Canada*.

» **Interveners Workshop**

On March 24, 2009, the Centre hosted a **workshop on the role of public interest groups** in social policy and rights litigation. The workshop was conducted by Nathalie Des Rosiers, newly appointed General Counsel to the Canadian Civil Liberties Association, and Professor Kent Roach. Both speakers were concerned about the ability of individual litigants to carry the financial burden of a test case. Des Rosiers noted that interveners encourage civil participation in the court process, while Roach rebutted the "court party critique" of interveners. These issues will be further explored in the Centre's November 2009 follow-up symposium.

» **Jury Representation Workshop**

On April 1, 2009, the Centre hosted a workshop on **jury representation** featuring Julian Falconer, counsel for Ricardo Wesley's estate and Jackie Esmonde. Wesley and Jamie Goodwin had died in a Kenora jail fire in January 2006 because they were unable to leave their cells. Falconer attempted to pick an inquest jury with First Nations representation, since Wesley belonged to the Nishnawbe Aski Nation. The subsequent litigation suggested systemic exclusion of First Nations people from jury rolls in several First Nations communities.

Advocacy and Litigation

» Brief Submitted to the Information and Privacy Commissioner/Ontario

In July 2009, the Centre was invited by the **Information and Privacy Commissioner of Ontario** to provide its views on the legal issues arising from the background checks conducted on prospective jurors in Ontario criminal trials. In keeping with its mandate, the Centre's brief focused on the breaches of the jurors' *Charter* rights and their broader systemic implications, with a particular emphasis on access to justice rights. In its conclusion, the Centre called for a public inquiry or independent investigation that would fully explore the incidence of the violations and the appropriate public protections to restore public confidence in the justice system. The Centre's brief was highlighted in the *Toronto Star* on July 24, 2009 in an article entitled "Wider probe into jury checks urged" and in the *Law Times* on August 10, 2009 in an article entitled, "Jury vetting practice used in nine trials".

» Intervener Standing in the *Conway* case

The Centre was granted joint intervener standing with the Criminal Lawyers' Association in ***Conway v. Her Majesty the Queen*** on July 30, 2009. This will be the Centre's first case before the Supreme Court of Canada. The key issue in the *Conway* case is the question of whether the Ontario Review Board, which annually reviews the status of not criminally responsible accused, is a "court of competent jurisdiction" under s. 24(1) of the *Charter*. The Centre's submissions are expected to emphasize the access to justice issue arising from the need to litigate *Charter* breaches in a separate forum and the unnecessary burden that this places upon the claimant.

Website Launch: aspercentre.ca

In May 2009, the Centre officially launched its website. It contains information about the Centre, showcases its upcoming events and highlights faculty research in constitutional law. The website also contains brief summaries of important *Charter*-related Court of Appeal cases from the last six months. Of particular interest to practitioners is the collection of facts from key *Charter* cases, which have been collected, scanned and made available on the Centre's website. The website has become a popular source for this material amongst the constitutional bar.



Clinical Legal Education

The Centre completed its first Clinical Legal Education course in the Winter 2009 term led by the Executive Director, Cheryl Milne, an experienced constitutional litigator. The students had the opportunity to earn course credit while working on constitutional advocacy projects.

Students formulated learning plans based upon their individual projects that set out the practical learning goals that they expected to achieve through the course. The seminar format combined substantive discussion on advocacy strategies, research and legal drafting skills and litigation procedures with student led discussions on the individual projects. After the course, students were interviewed individually for feedback on improvements to the course in the next year.

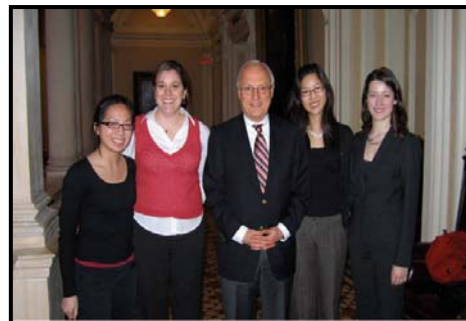
» Expert Speakers

The students had the opportunity to meet three leading members of the constitutional bar, who presented different topics relevant to constitutional litigation.

- **Mary Eberts** on test case clients. Ms. Eberts has received numerous awards for her work on equality rights, including the Governor-General's Gold Medal and several honorary doctorates.
- **Sarah Kraicer** on the use of social science evidence in constitutional litigation. Ms. Kraicer currently serves as Counsel, Constitutional Law Branch, Ministry of the Attorney General (Ontario).
- **Justice Stephen Goudge** on judging human rights cases at the Ontario Court of Appeal. Justice Goudge has served on the Court of Appeal since 1996 and recently spearheaded the Inquiry into Pediatric Forensic Pathology in Ontario.

» Clinic Projects

- **Housing Rights Coalition:** Three students worked with a group of housing advocates, providing research and legal drafting support for a test case regarding housing rights in Canada. The class also hosted a coalition meeting at the Faculty of Law, which allowed them to observe first hand the discussions about litigation strategy. Students prepared legal research memoranda on the s.1 analysis of the claim as well as the basis for a Charter claim for government failure to act to protect the *Charter* rights of homeless people.
- **Equality Rights for First Nations Children:** This project focused on services provided to on and off-reserve First Nations children. The student researched the constitutional issues behind a *Canadian Human Rights Act* complaint filed at the Canadian Human



Clinic students with Justice Goudge

Rights Tribunal, in particular the analysis under s.15 of the *Charter* as it applied to the claim, and formulated an advocacy strategy for “Jordan’s Principle” which advocates federal/provincial cooperation to provide needed services to aboriginal children.

- **Ontario Justice Education Network Jury Project:** The student, in consultation with lawyers and judges, researched and drafted the case scenario in a mock jury trial. She then traveled to Thunder Bay to help lead the mock trial held in a high school for aboriginal students. A daily journal of her experiences can be found on the Centre’s website. Her scenario was then used by the LAWS program for a mock jury trial with Aboriginal high school students in Toronto at the Faculty of Law.

Student Engagement

» **Volunteers for Workshops and Conferences**

In its first year, the Asper Centre was able to engage law students as volunteers at its conference on the Best Interests of the Child and at specific workshops. Students at the conference provided much needed support in keeping detailed records of the discussions taking place in the individual workshops. These records provided the information necessary for the completion of the conference report. The Centre will make more meaningful volunteer opportunities available to students through issue specific Working Groups in the next year.

» **Summer Students**

In the summer of 2009, the Centre obtained funding for two law students to assist the Executive Director. Kerri Lui worked at the Centre as its full-time research assistant, providing research and analysis support for the *Conway* case, juror privacy brief and upcoming workshops and conferences. Brauna Doidge provided assistance with the Centre’s website launch and ongoing enhancements, including the obtaining facta for the website collection and updating cases from courts of appeal across Canada. Brauna helped prepare the site for an upgrade of its content management system.

» **Student Practicum Placement**

Tiffany Lau, a student in the combined M.S.W./J.D. program at the University, chose the Asper Centre as her social work practicum placement. Supervised by Cheryl Milne, who holds both degrees and has been an Adjunct Practicum Professor with the Social Work Faculty for a number of years, Lau worked extensively on the Best Interests Conference, providing background research for the conference discussion paper and coordinating the student volunteers. She also provided much needed background research for our upcoming Interventions Symposium.

Asper Centre in the News

» Media Coverage

The opening of the Centre was featured in articles in major newspapers and magazines, as well as the previously mentioned *Toronto Star* article on its privacy brief. Our Advisory Group members and Executive Director have been cited in a number of news items in the past year.



David Asper (L) and Cheryl Milne

- **The Financial Post**, “Milne moves quickly on rights front” (August 27, 2008): In this article, the Executive Director discussed the Centre’s role in filling the gap left by the termination of the Court Challenges Program with respect to support for constitutional litigation.
- **Canadian Lawyer Magazine**, “U of T unveils New Charter Clinic” (September 8, 2008): This article discussed the opportunities for law students to become involved in the Asper Centre’s work.
- **Law Times**, ‘David Asper Centre opens at U of T’ (September 15, 2008): Article highlighted the September Colloquium celebrating the opening of the Centre.
- **The National Post**: Professors Lorne Sossin and Lorraine Weinrib provided an Op Ed on Canada's constitutional crisis published in the Post on December 11, 2008.
- **law.com International News Q&A**: Inside Canada's Unprecedented Suspension of Parliament, interview with Advisory Group Member, Prof. Lorraine Weinrib published December 18, 2008.
- **CBC's The Current**: Executive Director Cheryl Milne spoke on Friday May 22, 2009 about the principle of the best interests of the child in relation to parental freedoms and liberty rights in a child protection case in Winnipeg.
- **The Toronto Star**: Executive Director Cheryl Milne commented on *R. v. D.B.* and Advisory Group Member Prof. Kent Roach commented on the *Charkaoui* case in The Star article on Osgoode Charter Conference on April 25, 2009.
- **The Toronto Star**, Executive Director Cheryl Milne commented on the Asper Centre's brief on the practice of conducting background checks of potential jurors in criminal trials in an article on July 24, 2009.
- **For the Defence**, Executive Director Cheryl Milne described the work of the Centre in “Enhanced access to justice aim of constitutional centre” published in the summer, 2009 edition of the Criminal Lawyers’ Association newsletter.

Spotlight on Faculty Research

Working Papers

» Benjamin Alarie and Andrew Green, “Charter Decisions in the McLachlin Era: Consensus and Ideology at the Supreme Court of Canada”

This paper examines how justices in the McLachlin court have voted with regards to *Charter* appeals. The authors note that several of the Court’s members tend to vote differently in s. 15 equality appeals compared to *Charter* claims raised in criminal law appeals and *Charter* appeals in general. They conclude that this finding suggests that at least some justices were influenced by policy preferences on some occasions involving *Charter* rights adjudication. However, it also indicates that judicial preferences are much more nuanced than a simple “conservative” or “liberal” characterization of policy preferences.

» Lorne Sossin, “The McLachlin Court and the Promise of Procedural Justice”

In this working paper, Prof. Sossin contends that the Supreme Court has turned to creative procedural solutions to address substantive disputes over constitutional rights, a trend which he terms “prudential proceduralism”. To highlight this trend, he analyzes three case studies in the areas of national security, aboriginal rights and social and economic rights. From this analysis, Prof. Sossin concludes that problems may arise if the Court treats proceduralism as separate from the substantive outcomes that initially bring parties to court.

Conferences

» Ontario Bar Association, 7th Annual Charter Conference, September 26, 2008

Executive Director, Cheryl Milne moderated the Constitutional Overview Plenary Panel, featuring the major Charter cases in the past year.

» Osgoode Hall Law School, 2008 Constitutional Cases: the twelfth annual analysis of the constitutional decisions of the Supreme Court of Canada. April 17, 2009

Executive Director, Cheryl Milne, presented the paper, The Differential Treatment of Adolescents as a Principle of Fundamental Justice: An Analysis of *R. v. D.B.* and *A.C. v. Manitoba*, as part of the panel on Developments in Section 7 Fundamental Justice. The paper will be published in the forthcoming Supreme Court Review.

The Upcoming Year

Interventions Symposium

On November 6, 2009, the Centre will host a one-day symposium on the impact of interveners on public interest litigation, most specifically as it relates to *Charter* claims. Lawyers representing prominent intervener groups such as the Canadian Civil Liberties Association, LEAF and the Criminal Lawyers Association will join judges and academics to explore the issues that have arisen in respect of procedures and strategies in our adversarial system. The event will highlight ground-breaking research by Professors Ben Alarie and Andrew Green in the impact of interveners at the Supreme Court of Canada. We will also be joined by Professor Paul Collins who wrote *Friends of the Court* a review of the research on the impact of public interest groups at the US Supreme Court and Michael Fordham, QC, a prominent barrister from London who has represented numerous interveners in the House of Lords and the European Court of Human Rights.

Workshops

Our first fall workshop will focus on the cases released by the Supreme Court over the summer on the scope of s.24(2) of the *Charter* in relation to the exclusion of evidence in criminal trials. Lawyers who participated in the cases and faculty who have commented on them will provide commentary for students, faculty and the private bar in a lunch time seminar. We will continue to develop timely workshops that respond to emerging constitutional issues as they arise throughout the year.

Student Working Groups

Over the upcoming school year, the Centre plans to involve law students in four different working groups. The first working group will provide an opportunity for students to help the Centre identify emerging constitutional issues. Other working groups will focus on specific substantive legal issues, such as the constitutional rights of Canadian citizens abroad (in partnership with the international human rights program), and proposed internet surveillance legislation. They will provide the students with opportunities to research and write advocacy briefs on behalf of the Centre and to organize events around the issues.

Clinical Legal Education

We have an exciting list of projects for students in the up-coming year that will give them hands-on experience in constitutional litigation and policy advocacy. Our class is at its maximum capacity for the new school year. Students will be working on our first intervention in the *Conway* case at the Supreme Court and our application to intervene in the case of *Prime Minister of Canada et. al. v. Omar Khadr*, among other advocacy projects.

Participants in the Centre

The Centre could not have conducted its activities during its first year without the active participation and guidance of many faculty members, students, alumni and legal practitioners. Many gave of their time to brainstorm ideas, review the content of the website, assist with the events and generally provide support to a fledgling organization that aims to make a difference in constitutional law in Canada. We thank them for their input and support.

Faculty Members

Ben Alarie
Anita Anand
Lisa Austin
Nehal Bhuta
Rebecca Cook
Darlene Johnston
Ariel Katz
Ian Lee
Patrick Macklem
Audrey Macklin
Denise Reaume
Carol Rogerson
David Schneiderman
Martha Shaffer
Hamish Stewart
Douglas Sanderson

Students

Emily Bala	Rina Jeyakumar
Sabrina Bandali	Tiffany Lau
Papot Buppawan	Rosita Lee
Theresa Chan	Grace Leung
Stephanie Chipeur	Kerri Lui
Elizabeth Coyle	Derek McKee
Brauna Doidge	Cassia Prentice
Kathryn Esaw	Julie Stewart
Heather Gough	Candice Telfer
Jesse Hawkins	Megan Vuksic
Mike Hamata	Zeynab Ziaie
Colleen Iascone	

Friends of the Faculty

Frank Addario, Sack Goldblatt Mitchell LLP
Raj Anand, WeirFoulds LLP
Joseph Arvay, Q.C., Arvay Finlay Barristers
David Baker, Bakerlaw
Steven Barrett, Sack Goldblatt Mitchell LLP
Joanna Birenbaum, LEAF
Cindy Blackstock, First Nations Child and Family Caring Society
Lynn Burns, Pro Bono Law Ontario
Professor David Cameron, University of Toronto
Nathalie DesRosiers, Canadian Civil Liberties Association
Marya Duckworth, Ontario Court of Appeal
Jackie Esmonde, Falconer Charney LLP

Julian Falconer, Falconer Charney LLP
Bryan Finlay, WeirFoulds LLP
Hon. Justice Stephen Goudge, Ontario Court of Appeal
Mary Eberts, Eberts Law
Marlys Edwardh, Marlys Edwardh Barristers
R. Douglas Elliott, Roy Elliott O'Connor LLP
Faye Faraday, Cavaluzzo Hayes LLP
Tracy Heffernan, ACTO
Peter Hogg, Blakes LLP
Patricia Hughes, Law Commission of Ontario
Barbara Jackman, Jackman & Associates
Sarah Kraicer, Office of the Attorney General, Ontario
John B. Laskin, Torys LLP
David Leitch, alumnus
Roslyn Levine, Q.C., Superior Court of Justice
Carissima Mathen, University of New Brunswick Law School
Sarah McCoubrey, Ontario Justice Education Network
Janet Minor, Office of the Attorney General, Ontario
Cynthia Petersen, Sack Goldblatt Mitchell LLP
Bruce Porter, Social Rights Advocacy Centre
Peter Rosenthal, University of Toronto
Professor Peter Russell, University of Toronto
Paul Schabas, Blakes LLP
Rabinder Singh, Q.C., Matrix Chambers
Deputy Minister Lori Sterling, Ontario Ministry of Aboriginal Affairs
Greg Tardy, Parliamentary Counsel, Parliament of Canada