



David Asper Centre for Constitutional Rights UNIVERSITY OF TORONTO

Annual Report 2010-2011



Realizing Constitutional Rights through Advocacy, Education and Academic Research

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Message from the Executive Director

At the centre of emerging constitutional issues

It was another great year for the Asper Centre. While last year we could boast a relatively large number of interventions, this year one took up most of our time. Our intervention in the Polygamy Reference with the assistance of our pro bono Vancouver counsel, Hunter Litigation Chambers, was a good learning experience for the students and a great hands-on opportunity for me to participate in the litigation. Although we still await the court's decision, I believe that we made a significant impact on the conduct of the case.

When we began the process, children's rights were a somewhat lesser part of the parties' positions. With the assistance of Stephanie McHugh at Hunter's, we pushed the government for more evidence on the impact on children in the Bountiful community. School records, including various government inspection reports, and vital statistics records that documented teen pregnancies and age discrepancies between mothers and fathers, helped to show a pattern in the community. When evidence arrived from Texas of the trafficking of girls to the Yearning for Zion compound, those vital statistics records helped to show the ages and ultimately the identity of the girls involved to authorities. I am very proud that we and the Canadian Coalition for the Rights of Children may have contributed to the reopening of child abuse investigations in Bountiful.

Students were given the opportunity to assist at all stages of our participation in the case. Last year's social work practicum student, Esther Roche (a student in the combined JD/MSW program) helped to gather the studies and commentary in the social science literature on the impact of polygamy on children around the world. Clinic students helped to organize and summarize the volumes of material filed in the case. They also prepared numerous legal memoranda to assist in our preparation of the legal argument. A number of students traveled to Vancouver to observe and assist me in the preparation for the cross-examination of witnesses. The students were at the ground level of a precedent-setting case that is sure to go all the way to the Supreme Court of Canada.

This year I was privileged to be part of a gathering of experts from across the country on the subject of Canada's constitutional conventions. The result of this invitation-only workshop hosted by the Asper Centre and organized with Professor Emeritus Peter Russell, was a report that recommends the drafting of guidelines on the conventions that help to make our Parliamentary democracy work. Precedents for such guidelines exist in New Zealand and the United Kingdom. The rationale for the Asper Centre involvement starts with our inaugural workshop the day following the prorogation of the House of Commons in 2008. We followed this up with additional workshops to further inform our legal community and the general public. We have stayed involved for a couple of reasons, one being the opportunity to continue to work with Professor Russell, but more importantly the view that the recommendations we have made would help to keep our government transparent and accountable. We see this as being essential to the realization of democratic rights under the Charter.

I am also very proud of the work done this past year by our student working groups. The Project G20 group produced a number of helpful memoranda on the legal issues pertinent to the work being done by the Canadian Civil Liberties Association in the aftermath of the G20 summit. Students organized workshops to inform our community about the breaches of Charter rights that took place during the largest mass arrest in Canadian peace time history.

Next year may find us intervening in more cases before the Supreme Court as cases on standing in public interest litigation and the vetting of jury members by police and crown attorneys make their way to that Court. I look forward to another interesting year.



A handwritten signature in black ink, which appears to read 'Cheryl Milne'. The signature is fluid and cursive.

Cheryl Milne, LL.B, MSW
Executive Director

About the Asper Centre

“Congrats again on achieving such phenomenal success.” - David Asper



The David Asper Centre for Constitutional Rights was established by a generous gift to the Faculty of Law at the University of Toronto. 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.

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 serving as co-counsel in the David Milgaard wrongful conviction case and winning Mr. Milgaard's freedom before the Supreme Court of Canada. He has extensive corporate executive and directorial experience and has founded many national philanthropic projects.

Vision, Mission and Values

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 and will guide the Centre 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.

Advocacy and Litigation

Reference re: s. 293 of the Canadian Criminal Code (Polygamy Reference)

The Asper Centre, jointly with the Canadian Coalition for the Rights of Children, were granted standing as interested persons in the Reference by the Lieutenant Governor in Council set out in Order in Council No. 533 dated October 22, 2009 Concerning the Constitutionality of s. 293 of the Criminal Code of Canada, R.S.C. 1985, c. C 46, (offence of polygamy) at the British Columbia Supreme Court.

“the sort of ground-breaking constitutional issue the Centre was meant to address when it was created” - Dean Moran

The Centre and the CCRC submitted that the Reference questions before the BCSC required careful consideration of the rights of children both under the Charter and at international law. More specifically, the following submissions were advanced. First, the Charter is presumed to provide equal or greater protection to that provided by similar provisions in international instruments binding on Canada and therefore, in respect of children's rights, must be interpreted by specific reference to the UN Convention on the Rights of the Child. Second, the Charter does not protect conduct that poses a risk of material, physical, or psychological harm to others; Parliament need not justify limits on such conduct. Third, the Charter must be read as a whole, so that no right is privileged over another. Fourth, section 293 serves an important role in protecting children's rights from the infringements that are pervasive to polygamy. Fifth, to the extent that s. 293 is found to breach Charter rights of persons engaged in polygamy, it is thus justified to the extent that it serves to protect children's constitutional and international human rights. Finally, to the extent that s. 293 might be inconsistent with the Constitution in any way, the just and appropriate way for the Court to answer the Reference questions is by declaring the circumstances of the inconsistency, rather than attempting to delineate the many situations in which it may apply consistently with the Charter.



Counsel for the Asper Centre at the Polygamy Reference L-R: Cheryl Milne, Executive Director of the Asper Centre, Brent Olthuis and Stephanie McHugh of Hunter Litigation Chambers

Her Majesty the Queen in Right of the Province of Alberta v Caron

The Asper Centre was granted intervener standing on its own for the first time in *R v Caron*, a case that addressed the availability of advance costs in test case *Charter* litigation. The Centre was permitted to make written submissions only. Cheryl Milne and Lorne Sossin acted as counsel for the Centre. The case was heard on April 4, 2010 and the Supreme Court of Canada rendered its judgment on February 4, 2011.

The Supreme Court held that the Alberta Court of Queen's Bench had inherent jurisdiction to make the interim costs orders in respect of the proceedings in the provincial court. In the case of inferior tribunals (such as a provincial court) a superior court may render "assistance" in circumstances where the inferior tribunal is powerless to act and it is essential that action be taken in order to avoid an injustice. Such inherent jurisdiction must be exercised sparingly and with caution. In *Caron*, the Queen's Bench judge, in assessing the criteria relevant to the exercise of its discretion to make such an award, exercised that discretion reasonably.

Workshops and Conferences

Who Belongs? Rights, Benefits, Obligations and Immigration Status

(September 24—25, 2010. The Asper Centre co-sponsored, with the Canadian Civil Liberties Association, a two day conference at the Faculty of Law)

The conference explored the consequences of the differential access to rights and benefits on the basis of immigration status. The following are just some of the questions that were explored during the conference. What is the current situation with respect to immigration status distinctions made in different sectors such as voting rights, employment, professional affiliations, membership on boards, investment rules and access to social services? How has the concept of citizenship evolved through the years and internationally? How does it relate to First Nations' concepts of citizenship? How should we conceptualize distinctions on the basis of immigration status in light of mobility and equality rights?



Protecting Rights in the Aftermath of the G20 Summit in Toronto

(October 6th, 2010. Speakers: Cara Zwibel, Prof. Kent Roach, Irina Ceric; Moderated by Prof. David Schneiderman)

A student-led working group organized an inaugural panel discussion on the constitutional issues arising in light of the G20 summit from June 2010. The discussion sought to address the many allegations of breaches to *Charter* rights during the G20 week and add perspective to the debate about the proper balance between society's fundamental freedoms and the state's security interests.

The Decriminalization of Prostitution in Canada: Perspectives on *Bedford v Canada*

(October 25, 2010. Speakers: Prof. Alan Young — counsel for the applicants, Prof. Brenda Cossman, and Prof. Hamish Stewart; Moderated by Executive Director Cheryl Milne)

In the recent landmark case *Bedford v. Canada*, Justice Himel of the Ontario Superior Court held that three provisions of the Criminal Code that criminalize facets of prostitution—living on the avails of prostitution, keeping a common bawdy house and communicating in a public place for the purpose of engaging in prostitution—infringe the core values protected by section 7 of the *Charter*, and that this infringement is not saved by section 1 as a reasonable limit demonstrably justified in a free and democratic society. The panel discussion, organized by Asper Centre research assistant Renatta Austen, addressed the Superior Court decision and what it means for the future of the prostitution laws in Canada.

Workshop: the Interrogation Trilogy

(November 10, 2010. Speakers: Prof. Hamish Stewart, John Norris, John McInnes, Alexi Wood; Moderated by Executive Director Cheryl Milne)

In three cases released on October 8, 2010, the Supreme Court added the third story in what the Court described as the "interrogation trilogy" (*R. v. Oickle*, *R. v. Singh* and *R. v. Sinclair*). *Oickle* spoke to the types of techniques that officers can legally use to persuade someone to confess, including the use of an "infallible" lie detector test. *Singh* permitted repeated questioning after the accused asserted his right to silence. Whereas, *Sinclair* and the other 2 decisions released together hold that a person's s.10(b) right to counsel under the *Charter* does not mean that the accused has the right to have counsel present during police questioning or to consult more than once, unless there is a sufficient change in circumstances that might warrant additional legal advice.

Symposium on UN Security Council Resolution 1267

(November 19, 2010. Speakers: Judge Kimberly Prost (UN Ombudsperson for Al Qaeda and Taliban Sanctions), Paul Champ, Ben Wizner, Jeremy McBride, Prof. David Dyzenhaus, Prof. Kent Roach, Prof. Michelle Gallant; Introductions and Moderators: Renu Mandhane, Cheryl Milne, Sukanya Pillay and Nathalie Des Rosiers)

The symposium focused on the impact of targeted anti-terrorist sanctions on *Charter* and international human rights. The UN Ombudsperson for Al Qaeda and Taliban sanctions, Kimberly Prost gave a keynote presentation on the role of her office and steps being taken in terms of infusing due process in the operation of Security Council Resolution 1267. Her office aims to ensure access for petitioners seeking to be delisted, to gather comprehensive information, and to foster a dialogue that leads to the ultimate determination of whether, at the particular point in time, the petitioner should be on the sanction list. In spite of the limitations of the office, Ms. Prost insisted that it is a step in the right direction in terms of reconciling security interests with procedural and substantive fairness.



UN Ombudsperson for Taliban and Al Qaeda Sanctions, Kimberly Prost

Two panel discussions followed the keynote speaker. The first was comprised of three prominent litigators from Canada, the US and England, who have been representing listed individuals in their respective countries' domestic courts. They addressed the challenges of litigating the effects of these UN Security Council measures in the domestic law context. The second panel was comprised of three distinguished academics who addressed the tensions between fundamental conceptions of legality and the anti-terrorism measures undertaken by the Security Council post 9/11.

“TERRIFIC program! We are American citizens ... and the situations described by Ben Wizner of the ACLU are as we remember in that country. [] I wanted to let you know how much we APPRECIATED the program...” - audience member

Freedom of Expression and the G20: from the Summit to Today

(January 17, 2011— Speakers: Filmmaker Adam Letalik, Prof. David Schneiderman, and criminal lawyer John Norris)

The workshop began with a screening of the documentary “Toronto G20 Exposed”. The film was followed by a panel discussion focused on freedom of expression issues arising from the G20 week. Filmmaker Adam Letalik spoke about the film and his G20 experience. Prof. David Schneiderman addressed the *Charter* issues pertaining to the summit weekend, including the Public Works Protection Act, and criminal lawyer, John Norris, spoke about G20-related bail conditions.

Constitutional Roundtable: Is Coalition Government in Britain Here to Stay?

(February 3, 2011—Prof. Robert Hazell, University College London)

In a lecture co-sponsored by the Asper Centre and the Department of Political Science, Prof. Robert Hazell explained the background of the new coalition government in the United Kingdom and explored its prospects. He focused in particular on the plans for constitutional reform put forward by the new government: fixed term parliaments, the 2011 referendum on the voting system, reducing the size of the House of Commons, and electing the House of Lords.



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Symposium: Funding the Charter Challenge and the Morris A. Gross Memorial Lecture 2011

(April 1, 2011. Speakers: Joseph Arvay Q.C., Douglas Elliott, David McKillop, Prof. Janet Mosher, Prof. Chris Tollefson and Prof. Jasminka Kalajdzic; Memorial Lecture Speaker: Marlys Edwardh, CM)

The Asper Centre hosted a symposium focused on the access to funding issues affecting Charter litigation. The first panel, comprised of Joseph Arvay Q.C., Douglas Elliot and David McKillop spoke about the role of the law of costs on constitutional litigation, and available strategies for Charter challenge financing. The second panel, comprised of Prof. Janet Mosher, Prof. Chris Tollefson and Prof. Jasminka Kalajdzic addressed the role (and duty) of the legal profession in facilitating access to justice for Charter claims.

The Morris A. Gross Memorial Lecture, given by Marlys Edwardh, focused on the accomplishments of the Legal Aid system so far in advancing important Charter claims, as well as on the significant weaknesses that still make access to justice a “burning issue”. As a solution, she echoed the views of her colleague Len Doust, who recommended “a legal aid system on both civil and criminal sides that treats legal services as an essential public service on par with health care and education.” In her view, legal aid reform is the preferable route, compared to incremental changes in the law of costs (which is still discretionary and unpredictable), or compared to the *Caron* case-by-case approach for interim funding orders (which is reserved for exceptional cases.)



Marlys Edwardh, CM

G20: Lessons Learned, Messages Lost

(June 23, 2011. Speakers: Meghan Daniel, Clayton Ruby, John Sewell, Barbara Byers; Moderated by: Bob Hepburn)



Meghan Daniel and Clayton Ruby,

One year after the events surrounding the G20 summit in Toronto, the Canadian Civil Liberties Association, the Canadian Labour Congress and The David Asper Centre for Constitutional Rights organized a panel discussion that addressed the fundamental freedoms violations of June 2010, and the lack of accountability exhibited since. The messages lost were the messages of the peaceful protesters who were silenced by the police and blamed for “not staying at home”. The main lesson learned, according to both the “optimistic” and “pessimistic” panelists, is

that Canadians cannot give up on their fundamental freedoms, and the only path forward is to resist intimidating state action and continue to assert *Charter* rights. Only persistence, in the long term, will lead to government accountability and a positive change in political attitudes.

“And one year later, the G20 is still making news.” - Bob Hepburn, The Toronto Star



The audience welcomed the opportunity to ask questions and express strong views

Clinical Legal Education

Clinic Students: Will Morrison, Sabrina Bandali, Becca McConchie, Kathryn McGoldrick, Marc Gibson, Michael da Silva, Ian Kennedy, Dan Rohde, Elizabeth Coyle, Robert Smith

Five of the students were assigned to the Polygamy Reference case while the other students worked on projects with LEAF and the Law Commission of Ontario. A major focus of class discussions this year was on the use of social science evidence in Charter litigation owing to the work on the Reference and the release of the Bedford case by the Ontario Courts. Students also had the opportunity to observe argument in a Charter case at the Ontario Court of Appeal and to meet the bench hearing the case.

“For me, this case wasn’t just about the law, but about its impact on different groups of people in the world. I had no idea how exciting my career could be.” - Becca McConchie

Clinic Projects:

Polygamy Reference

A team of students provided litigation support to our intervention in the Reference re. s.293 of the Criminal Code. Students summarized expert evidence, researched legal issues and travelled to Vancouver to assist the executive director and observe the proceedings.

LEAF

Two teams of students worked on projects for the Women’s Legal Education and Action Fund including research on the representation of women in political office and background research on the prostitution challenge: *Bedford v Canada*.

Law Commission of Ontario

A student provided legal research on the federalism issues related to the provision of services to undocumented immigrants in Ontario.

Volunteers:

Expert Speakers

- ◆ Patricia Hughes, Executive Director of the Law Commission of Ontario spoke about policy advocacy.
- ◆ Sarah Kraicer, from the Constitutional Law Branch of the Attorney General of Ontario spoke about how expert evidence is gathered and used in constitutional cases.
- ◆ Mary Eberts spoke about the solicitor-client relationship in test case litigation.
- ◆ Sooin Kim guided the students through hands-on research on legislative history, an essential component to any constitutional challenge.



Student Engagement

Working Groups

Project G20

The Project G20 Working Group allowed law students at the University of Toronto to contribute to the discourse addressing the interaction between *Charter* rights and political demonstration within the specific context of the G20 arrests. The working group organized several workshops with guest speakers, and organized a provocative session on “Freedom of Expression” for the high school conference, Global Citizens. Project G20 also prepared several research memoranda for the Canadian Civil Liberties Association on topics such as the regulation of non-lethal weapons, kettling as a form of detention, and international law instruments for the protection of freedom of association. The students also organized a panel for the annual SpinLaw conference and a session for LAWS highschool students on the importance of protests. (**Student Members:** Jonathan Charland, Noah Dolgoy, Jeremy Ozier, Hayley Peglar, Bahaa Ezzelarab, Lee Webb, Akosua Matthews, Mark Rieger, Daniel Simonian, Parsa Pezeshki, Ryan Lax, Meghan Dureen, Jennifer Bernardo, Charlie Barnard, Carleigh Kotyk, Arina Rosu, Liam Churchill, Kamakshi Tandon; **Faculty Support:** Sujit Choudhry, David Schneiderman)

International Prisoner Transfers

The *International Transfer of Offenders Act* (the *Act*), which came into force on October 29, 2004, is a modernization of the *Transfer of Offenders Act*, which was proclaimed in 1978. The legislative purpose of the *Act* is “to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.” Bill C-5 proposes an increase in discretionary power to the Public Safety Minister to refuse to accept the return of Canadian citizens to serve their sentences in Canada. The modifications to the *Act*, if passed, have the potential to undermine public safety and to violate the rights of Canadians under ss. 6 and 7 of the *Charter*. As its main project, the group created a brief on the effects of Bill C-5, which was presented to the Public Safety Committee. (**Student Members:** Stoney Baker, Katherine Dalglish, Anu Koshal, Ryan Lax, Tatiana Lazdins, Esther Oh, Katherine Robertson, Sean Tyler; **Faculty Support:** Audrey Macklin, Cheryl Milne)

Asper Centre Newsletter

The newsletter working group created a fall electronic newsletter, and two full-length print issues of the Asper Centre Outlook. Both students and faculty members have had the opportunity to comment on conferences, workshops, and important constitutional cases. (**Student Members:** Denise Cooney, Ian Kennedy, David Schmidt, Michael da Silva; **Faculty Support:** Cheryl Milne)

Wilson Moot

For the second year in a row, the University of Toronto Wilson Moot team achieved outstanding results with the support of the Asper Centre. Advisory Group member, Professor Lorraine Weinrib and Executive Director, Cheryl Milne acted as faculty coaches to the students who represented the school in this competitive moot focused on s. 15 of the *Charter*. Mooters Emily Bala, Lwam Ghebrehariat, Adrian Johnston and Jessica Lithwick emerged victorious over Osgoode Hall Law School in the final round in front of a panel comprised of Justice Ian Binnie of the Supreme Court of Canada, Justice Gloria Epstein of the Ontario Court of Appeal and the Honourable Wally Opal, QC. Adrian Johnston won First Place Oralist, and Emily Bala placed third.



Mooters and Student Coaches of the winning Wilson Moot Team

Student Research Assistants

Renatta Austin, Research Assistant 2010-2011— Renatta helped to keep our website up to date and organized one of our lunch time workshops.

Arina Rosu, Research Assistant Summer 2011— Arina is working this summer for the Centre conducting legal research and writing support for the Centre.

Kate Joseph, MSW Practicum Student— Kate completed her practicum placement for her MSW degree with the Centre and conducted research to support upcoming programs.

Asper/IHRP Summer Internships

The Asper Centre together with the International Human Rights Program began a new program this year selecting up to two University of Toronto students to receive internships to work in an organization within Canada that focuses on human rights advocacy. The funding comes from the John and Mary A. Yaremko Programme in Multiculturalism and Human Rights. The endowed fund provides awards for students who demonstrate academic excellence and who are participating in a broad range of community organizations relating to human rights and multiculturalism.

Chris Evans is volunteering this summer at West Coast Environmental Law (WCEL) in British Columbia. His work has focused on two areas: the proposed “Northern Gateway Pipeline” project, and law reform related to forest licences in British Columbia. WCEL works closely with First Nations on both initiatives to advance recognition of their rights under section 35 of the Constitution, focusing mainly on the Crown’s duty to consult and accommodate and Aboriginal rights and title.

Megan Strachan is volunteering this summer with Yukon River Watershed Council in Anchorage, Alaska. YRITWC is a unique organization, consisting of 70 First Nation tribes throughout the Yukon River Watershed, including tribes in Alaska, Yukon Territory and British Columbia. YRITWC aims to preserve and protect the Yukon River through coordinating, facilitating, and providing a forum for these tribes to come together and work collectively and individually to realize this common goal. She has been tasked with researching water rights in the context of Yukon Territory. The reports of their activities are available on the Asper Centre website.

**“... this summer has been absolutely incredible – both living and working in Alaska with this amazing organization and group of people – and I am so grateful for this experience!”
- Megan Strachan**

The Upcoming Year

Clinical Legal Education

As we await the decision in the Polygamy Reference, students will be working on two intervention applications as well as an exciting project with the Refugee Law Office focusing on the detention of refugee claimants.

Workshops and Conferences

On November 4-5, 2011, the Asper Centre is joining with the Health Law Group to host a two day conference on the Reference re. Assisted Human Reproduction Act. We expect to produce a publication from the papers to be delivered at this program. We are also currently planning a spring conference that will focus on the use of social science evidence by parties and the courts in constitutional litigation. Mark your calendars for March 23-24, 2012.

Working Groups

Student working groups will be analyzing the promised crime focused legislation from the federal government and proposed immigration related legislation. We also have a number of student editors for our newsletter.

Research and Writing

Workshop Papers

Peter Russell and Cheryl Milne, “Adjusting to a New Era of Parliamentary Government”

The Centre published a report (in both English and French) on the Constitutional Conventions Workshop it ran on February 3 and 4, 2011. The report recommends the introduction of clear guidelines into the Cabinet Manual that can better inform the public about how the system is supposed to work. Both New Zealand and the UK have been acknowledged as systems that are ahead of Canada in terms of constitutional conventions transparency. The report also recommends a review of Standing Orders with respect to votes of non-confidence and informal measures to adjust the practices and norms of parliamentary life to make parliament more co-operative and functional.

**“... add my name to those
who admire this document”
- Peter Hogg**

Background Papers to the Constitutional Conventions Workshop

Mel Cappe, “The Caretaker Conventions”

Jennifer Smith and Peter Aucoin, “Votes of Non-Confidence”

Hugo Cyr, “Dissolution”

Errol Mendes, “Prorogation”

Participants in the Workshop were:

1. Peter Aucoin (Dalhousie University, paper contribution)
2. Michael Bliss (University of Toronto)
3. Barbara Cameron (York University)
4. David Cameron (University of Toronto)
5. Mel Cappe (Institute for Research on Public Policy)
6. Lois Claxton (Office of the Governor General)
7. Hugo Cyr (Université du Québec à Montréal)
8. Adam Dodek (University of Ottawa)
9. Tom Flanagan (University of Calgary)
10. C. E. S. Franks (Queen’s University)
11. Bill Graham (University of Toronto)
12. Robert Hazell (University College London)
13. Andrew Heard (Simon Fraser University)
14. Peter Hogg (Osgoode Hall Law School)
15. Errol Mendes (University of Ottawa)
16. Cheryl Milne (University of Toronto)
17. Patrick Monahan (York University)
18. Peter Russell (University of Toronto)
19. David Schneiderman (University of Toronto)
20. Brian Slaterry (Osgoode Hall Law School)
21. Jennifer Smith (Dalhousie University, paper contribution)
22. Paul Thomas (University of Manitoba)
23. Brian Topp (ACTRA)
24. Daniel Turp (Université de Montréal)
25. Robert Walsh (Law Clerk and Parliamentary Counsel, House of Commons)
26. Lorraine Weinrib (University of Toronto)

Policy Brief

Brief on Bill C-5: An Act to Amend the International Transfer of Prisoners Act

A Centre Working Group, with input from Professor Audrey Macklin, wrote a brief to the Standing Committee on Public Safety and National Security concerning the constitutional implications of Bill C-5. The Bill sought to amend the legislation governing the transfer of prisoners in foreign countries who are Canadian citizens back to Canada. The group recommended the rejection of Bill C-5, since the broad discretion accorded to the Minister in rejecting prisoner transfers, in fact, serves to subvert the public safety objective of the legislation.

Asper Centre in the News

Our Executive Director, Advisory Group Members, and Constitutional Faculty have been cited regarding recent constitutional issues in the past year:

CTV News: Advisory Group member, Professor Audrey Macklin comments on the military commission proceedings on the Omar Khadr case. (April 28, 2010)

The Globe and Mail: The Chair of the Advisory Group, Professor Sujit Choudhry awarded a \$225,000.00 Trudeau Foundation Fellowship for his work on post-conflict constitutional law. (September 28, 2010)

The Canadian Press via CBC News: Brent Olthuis, pro bono counsel for the Asper Centre and the Canadian Coalition for the Rights of Children quoted on our opening statement to the court in the Polygamy Reference case. (November 24, 2010)

Toronto Star: Constitutional Conventions workshop hosted by the Asper Centre is referenced in an article about a potential coalition government in Canada. (March 25, 2011)

Vancouver Sun: Executive Director Cheryl Milne's submissions in the Polygamy Reference case quoted. (April 1, 2011)

Toronto Star: Bob Hepburn writes about the lack of government accountability one year after the G20, and mentions the panel discussion run by the CCLA, the Canadian Labour Congress and the Asper Centre, "G20: Lessons Learned, Messages Lost". (June 22, 2011)

City TV News: G20 panel discussion referenced on City TV News. Panellists John Sewell and Clayton Ruby are interviewed. (June 23, 2011)

Website Updates

Our Supreme Court Case Materials and Cross-Canada Appellate Cases sections have been continuously updated over the past year. The Asper Centre site serves the important role of making case information readily available to the public for research and educational uses. Additionally, webcasts of most of the events run by the Centre are available for public viewing. Our G20 Forum on June 23 is also available on YouTube.

Webcasts Available on our Website

www.aspercentre.ca

- ◆ G20: Lessons Learned, Messages Lost (June 23, 2011)
- ◆ Symposium: Funding the Charter Challenge (April 1, 2011)
- ◆ Professor Robert Hazell - Is Coalition Government in Britain Here to Stay? (February 3, 2011)
- ◆ UN Security Council Resolution 1267: Impact of targeted anti-terrorist sanctions on Charter and international human rights (November 19, 2010)

Advisory Group



Professor Sujit Choudhry (Chair) holds the Scholl Chair. His research and teaching interests focus on comparative constitutional law and Canadian constitutional law. Professor Choudhry is currently working on a book, *Rethinking Comparative Constitutional Law*, and is the editor of several volumes. In 2010, he was appointed to the UN mediation roster, a panel of experts to be deployed to assist with ceasefire or peace and constitutional negotiations. He was also recently awarded the prestigious Trudeau Fellowship for his work on post-conflict constitutional processes. Professor Choudhry plans to use his award to transform Canada into an innovative and leading international centre for the study and practice of post-conflict constitution-making.



Professor Kent Roach holds the Prichard-Wilson Chair of Law and Public Policy. His research interests include the comparative study of miscarriages of justice, judicial review, and anti-terrorism law and policy. Professor Roach's books include *Constitutional Remedies in Canada*, *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice*, *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue*, *September 11: Consequences for Canada* and *The Charter of Rights and Freedoms* 3rd ed (with Robert Sharpe). He has written and published over 110 articles and chapters worldwide. He also served as counsel in several important *Charter* cases, most recently appearing at the Supreme Court in the landmark constitutional remedies case, *City of Vancouver v Ward*.



Professor Lorraine Weinrib is appointed at the Faculty of Law and the Department of Political Science. She is currently studying the legitimacy of the post-WWII model of judicially enforced rights-protection and is working on a monograph entitled *The Supreme Court of Canada in the Age of Rights*. Her additional publications advocate the institutional coherence of the *Charter*, provide interpretation of sections 1 and 33, address theoretical dimension of the Supreme Court's *Charter* jurisprudence and contribute an in depth study of leading cases. She also writes a monthly column on constitutional issues in the *Law Times*. Prior to her academic appointment she was Deputy Director of Constitutional Law and Policy in the Crown Law office at the Ministry of the Attorney General (Ontario).



Professor Ed Morgan teaches in the fields of international law and constitutional law. He practiced civil litigation at Davies, Ward & Beck in Toronto from 1989-1997. He has written *International Law and the Canadian Courts* (Carswell, 1990), *The Aesthetics of International Law* (U. Toronto Press, 2007) as well as 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 constitutional law issues. Professor Morgan has appeared at all levels of Canadian courts, the Inter-American Court of Human Rights and the Decolonization Committee of the United Nations, and has provided expert evidence to numerous U.S. courts in jurisdictional disputes and conflict of laws cases.



Paul Schabas is a litigation partner at Blakes in Toronto and an adjunct faculty member at the University of Toronto, Faculty of Law. His practice focuses on complex commercial litigation and arbitrations. Mr. Schabas also has expertise in white collar criminal and regulatory matters, constitutional, media and public law. He is recognized by his peers as a leading counsel, as demonstrated by his election as a fellow of the prestigious American College of Trial Lawyers (2007). He is listed in *The Best Lawyers in Canada 2011* (where he was media lawyer of the year in 2010) in the areas of corporate and commercial litigation, criminal defence, administrative and public law, and defamation and media law. Landmark constitutional cases argued by Mr. Schabas include *R v Morgentaler*, *Smoling and Scott* [1988] 1 SCR 30, *Canada (Human Rights Commission) v Taylor*, [1990] 3 SCR 892, and *Canadian Foundation for Children, Youth and the Law v Canada*, 2004 1 SCR 76.

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