

## Asper Centre E-News

Summer 2012

### Recent Cases, Bills and Conferences

#### The Asper Centre on Bill C-31

On April 30th of this year, Prof. Audrey Macklin made submissions on behalf of the Asper Centre before the House of Commons' Standing Committee on Citizenship and Immigration. The Committee was considering Bill C-31, *Protecting Canada's Immigration System Act*, a sweeping piece of legislation with far-reaching changes to refugee determination, detention of newcomers and family reunification, among other issues. Prof. Macklin appeared alongside Prof. Sean Rehaag of Osgoode Hall Law School and lawyer Barbara Jackman.



For more details, click [here](#) to see a longer summary of Prof. Macklin's submissions prepared by the Asper Centre's summer research assistant, JD/MGA student Louis Century.

Audrey Macklin, Photo Courtesy of University of Toronto, Faculty of Law

#### Refugee Law Office Conference on Bill C-31

The *Protecting Canada's Immigration System Act*, which transforms Canada's refugee laws, received Royal Assent on June 28th, 2012. Its provisions will come into force over the next several months; some already have. To make sense of this new statutory reality, on July 5th, refugee lawyers from across Ontario gathered at the Annual Refugee Law Office / Legal Aid Ontario Conference. The day-long conference was a whirlwind tour of the cascading changes contained in Bill C-31.

The general sentiment was, after a long and hard-fought campaign opposing the changes, now it is time to prepare for them. Each speaker, allotted half-an-hour or less, touched on a different aspect of the legislation: How will the new refugee appeals work? What is the significance of Ministerial designation based on means of arrival? In what new ways can permanent residence be lost? How will countries be designated as "safe"? Will there be stays of deportation? How will dramatically expedited timelines and an increase in unrepresented claimants affect the practice of refugee law?

In the closing session, a panel of eight leading refugee lawyers discussed strategy around constitutional challenges. Several highlighted the need for open communication and cooperation among counsel, with the Canadian Association of Refugee Lawyers as a focal point. The session was entitled "Don't be a hero," and most seemed to support this message: the goal of each is to improve the law for all, and a poorly argued Charter challenge relying on poor facts can do the opposite. But a healthy debate ensued over the wisdom of this rationale, with another lawyer advocating heroism: it is zealous client advocacy that transforms the law, not conservative selection of facts and cases, he argued.

Participants no doubt emerged from the day with a heightened awareness of the monumental changes that await their legal practices and the lives of refugees in Canada, some of which are already underway.

#### *Carter v Canada (Attorney General)*, 2012 BCSC 886

On June 15<sup>th</sup>, 2012, the British Columbia Supreme Court declared that Canada's laws against physician-assisted suicide were unconstitutional because they discriminate against the physically disabled. The court also found that the laws deprive the physically disabled and those who try to help them of the right to life and liberty guaranteed by section 7 of the *Charter*.

The Supreme Court of Canada last ruled on the right-to-die debate in 1993 in the case of *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519. The Court ruled against Rodriguez' request for doctor-assisted suicide, rejecting her claims that her section 7 and section 15 rights were violated.

In *Carter*, Joseph Arvay, the Asper Centre's inaugural Constitutional-Litigator-in-Residence, aided Carter and the B.C. Civil Liberties Association in arguing that the Criminal Code provisions against physician-assisted suicide are

unconstitutional and that individuals have the right to end his or her life in a "humane and dignified manner." In the April 2012 edition of the Asper Newsletter, we asked Arvay how he planned to distinguish *Carter* from *Rodriguez*. Arvay said that not only have three new principles of fundamental justice – overbreadth, gross disproportionality, and the principle of equality – emerged since *Rodriguez*, *Carter*, and most constitutional cases coming before the courts today, have a much better factual foundation than earlier *Charter* cases. This raises an interesting discussion that will be one of the topics of the Asper Centre's conference on the role of social science evidence in *Charter* litigation, taking place in November.



Joseph Arvay, Photo Used Under Creative Commons (Wikipedia)

### Recent Constitutional Cases – Appellate

[Centre for Addiction and Mental Health v Ontario, 2012 ONCA 342](#) At issue in this appeal was section 672.58 of the Criminal Code, which allows for a treatment order to be made that requires an accused to submit involuntarily to anti-psychotic drug therapy following a finding that the accused is unfit to stand trial. The Ontario Court of Appeal was given the controversial task of balancing the need for dignified and timely treatment of a mentally ill person deemed unfit to stand trial, on the one hand, and the fair distribution of limited public resources in treatment facilities, on the other hand. For a longer summary of this judgment, click [here](#).

[Pridgen v. University of Calgary, 2012 ABCA 139](#) This appeal by the University of Calgary examined whether universities are insulated from Charter scrutiny and whether students are entitled to freedom of expression when using social networking sites for the purpose of criticizing educational institutions and professors. For a longer summary of this judgment, click [here](#).

For more summaries of recent judgments, go to <http://www.aspercentre.ca/constitutional-cases/appeals.htm>

### Upcoming Events

#### Charter Litigation and the Use of Social Science Evidence: After thirty years what have we learned? What could we do better?

On November 9<sup>th</sup> and 10<sup>th</sup>, 2012, the Asper Centre will be holding a conference on *Charter* litigation and the use of social science evidence. The goal is to foster inter-disciplinary understanding and collaboration in addressing social science evidence in *Charter* litigation by creating opportunities for dialogue between social scientists, academics, students, and litigators.

Key themes include:

- Analysis and evaluation of the categories of social science evidence in *Charter* litigation
- The processes of gathering and presenting social science evidence in *Charter* litigation
- Historical and comparative perspectives
- The tensions between the disciplines of social science and law as arise in the context of litigation
- The persuasive value of social science evidence, its limits, and its admissibility

Other conference themes may include such issues as the ethics of building the social sciences case; choosing and preparing expert witnesses; social science evidence as a vehicle for legal change; and judicial approaches to hearing and analyzing social science evidence. In particular, the conference is designed to stimulate a dialogue that highlights the approaches of various disciplines to the use of social science evidence in order to develop an inter-disciplinary understanding and collaboration.

For more information about the conference, please go to [www.aspercentre.ca](http://www.aspercentre.ca)

#### Fall Newsletter

Watch out for the full fall edition of the Asper Centre Outlook, coming January 2013. For more information on getting involved in the Asper Centre, and for regular updates on the Asper Centre's ongoing projects and events, bookmark <http://www.aspercentre.ca>

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