



# David Asper Centre for Constitutional Rights UNIVERSITY OF TORONTO

## Annual Report 2009-2010



*Realizing Constitutional Rights through Advocacy, Education and Academic Research*



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## Second Year in Review: Message from the Executive Director

In this our second year, we have seen an incredible burst of accomplishments flowing from the consultation and strategic planning conducted last year. It had been my modest goal to seek and hopefully obtain standing in a Supreme Court of Canada case in the 2009-2010 academic year. Not only did we accomplish this goal with *Conway v. Her Majesty the Queen*, but we went on to successfully intervene in three more cases: *Canada v. Khadr*, *City of Vancouver v. Ward* and *Alberta v. Caron*. We can claim success in both *Ward* and *Conway* and more limited success in *Khadr*. In three of the four cases we conducted we are grateful for the faith that our partners, Criminal Lawyers' Association, BC Civil Liberties Association, Human Rights Watch and our own IHRP, had in us. In the last case of the year, *Caron*, we managed to move from supported baby-steps to standing on our own albeit in writing only. We still await the Court's decision.

While it is a major achievement to be recognized as a relevant organization in the leading constitutional cases in the country in our own right, we will continue to seek out partnerships as appropriate. Our next case finds us again working with a partner organization, the Canadian Coalition for the Rights of Children, in the Reference re: s.293 of the Canadian *Criminal Code*, where we have been granted status as interested persons in this important constitutional case regarding the constitutionality of the *Criminal Code* provisions prohibiting polygamy. Brent Olthuis of Hunter Litigation Chambers in Vancouver is providing *pro bono* services and will be working with me as co-counsel to assist us in presenting a child rights perspective in the case. Students in next year's clinic will have an opportunity to become significantly involved in this case at the ground level.

This year we have built on some of our earlier achievements outside of the courts. Students have been engaged through work study, practicum and volunteer opportunities in providing material to be uploaded to our website launched last summer. We will continue to look for ways to improve it and make it the source for cutting edge writing and information on constitutional issues. Our first policy submission to the Ontario Privacy Commissioner focused on the Charter rights of prospective jurors in criminal trials in the context of the investigation she conducted into the breaches of privacy caused by the conduct of background searches by police on potential jurors. The Commissioner's report released in the fall of 2009 acknowledges our contribution and references our submissions in key areas.

We held an extremely successful one day symposium on the Role of Interveners in Public Interest

Litigation in November. Leading lawyers from across the country, and internationally, came to discuss the impact that interveners can make in important litigation in the public interest. Members of the judiciary also shared their thoughts about effective interventions and the value they place on contributions made to the legal arguments by public interest groups. The Symposium is available, broken down by panel discussion, in the archived webcast available on our site. I particularly recommend viewing the international panel for a window on how it is done elsewhere.

Next year will also bring new partnerships in legal education. We will be joining the Canadian Civil Liberties Association in co-sponsoring an event focused on the discrimination faced by immigrants and non-citizens in Canada, "Who Belongs?". We have also partnered with CCLA and the International Human Rights Program to co-sponsor a half day workshop on UN Security Council Resolution 1267 (the "no fly list"). Additional initiatives include a half day event on the issue of costs and funding for Charter litigation as well as a workshop on our constitutional conventions in follow-up to our prorogation series.

The most enjoyable work that I have done this year (besides getting back into Court), has been my work with the students. I have thoroughly enjoyed watching them become engaged in the practice of public interest advocacy through the clinic and working groups. They had the exciting opportunity to work on the first litigation by the Centre and rose to the occasion.

I would like to thank the lawyers who have given of their time and services to support the Centre. They are acknowledged individually in this report. A special mention goes to Ogilvy Renault LLP who has agreed to be our Ottawa agents on an ongoing and *pro bono* basis.

Finally, I wish to congratulate and bid fond farewell to Professor Lorne Sossin. I have greatly appreciated his consistent, thoughtful and sage advice on our Advisory Group. We all wish him the best as Dean of Osgoode Hall Law School.

I look forward to continued growth in our research mandate over the next year and more exciting litigation.



Cheryl Milne  
Executive Director



# Accomplishments of the 2009-2010 Year

## Advocacy and Litigation

### *Conway v. Her Majesty the Queen, et al.*

The Asper Centre was granted standing as an intervener jointly with the Criminal Lawyer's Association in its first case before the Supreme Court of Canada. The case examined the constitutional jurisdiction of the Ontario Review Board, which reviews the treatment of persons found not criminally responsible under the *Criminal Code of Canada*. We argued that a Review Board does have jurisdiction under s. 24(1) of the *Charter* to find *Charter* violations and to provide appropriate and just remedies for them. The Supreme Court released its decision June 11, 2010 declaring that a Review Board is a court of competent jurisdiction to grant remedies under s. 24(1) of the *Charter*. However, the particular remedies sought could not be granted given the Board's statutory scheme. Prof. Kent Roach and Cheryl Milne were co-counsel on behalf of the Centre, with Cheryl Milne appearing at the hearing.



Exec. Dir. Cheryl Milne and students Kim Potter, Brendan Morrison and Ryan Liss at the Supreme Court of Canada

### *Prime Minister of Canada et al. v. Omar Khadr*

The Asper Centre, jointly with U. of T.'s International Human Rights Program and Human Rights Watch, was granted standing as an intervener in the government's appeal from the Federal Court's decision to order the Prime Minister to request Omar Khadr's repatriation to Canada. John Norris, Prof. Audrey Macklin and Brydie Bethel acted as co-counsel for the Centre and co-interveners. The Supreme Court released its decision in the case on January 29, 2010 declaring that Omar Khadr's rights had been breached, but refraining from ordering the Prime Minister to seek repatriation.

### *City of Vancouver v. Ward*

The Asper Centre, jointly with British Columbia Civil Liberties Association, was granted standing as an intervener in this appeal before the Supreme Court of Canada heard on January 18, 2010. The case addressed the question of whether damages are available for the infringement of a right or freedom guaranteed by the *Charter* in the absence of bad faith, an abuse of power or tortious conduct on the part of the infringer. The Court's decision, released on July 23, 2010, upheld the award of damages for the breach of the Respondent's rights under s.8 of the *Charter*. Prof. Kent Roach and Grace Pastine of BCCLA acted as co-counsel in the appeal.

### *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 this case which addresses the availability of advance costs in test case *Charter* litigation. The Centre was permitted to make written submissions only. Cheryl Milne acted as counsel for the Centre. The case was heard on April 14, 2010, and we await the Court's decision.

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

The Asper Centre, jointly with the Canadian Coalition for the Rights of Children, has been 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). The Centre and the Coalition will be presenting arguments based upon the impact of the case and the practice of polygamy on the constitutional and international human rights of children. Brent Olthuis and Stephanie McHugh of Hunter Litigation Chambers in Vancouver are representing the Centre and Coalition on a pro bono basis. Cheryl Milne is acting as co-counsel. The hearing is scheduled to start in November 2010.



# Workshops and Conferences

## **Exclusion of evidence cases: *R. v. Grant*, *R. v. Harrison*, *R. v. Suberu*, *R. v. Shephard***

(September 30, 2009. Speakers: Prof. Martha Shaffer, Prof. Hamish Stewart, Jonathan Dawe, Rick Visca)

On July 17, 2009, the Supreme Court of Canada handed down its long awaited decisions in *R. v. Grant*, *R. v. Harrison*, *R. v. Shephard* and *R. v. Suberu* clarifying the law in respect of the exclusion of evidence under s.24 (2) of the Charter. Their decisions have been described as an appropriate balancing between liberty interests and the administration of justice, a clear message to police of the constitutional limits placed on their powers, and an imaginative redrafting of the Stillman test, but with an impact that might be hard to predict. Our distinguished panel summarized, debated and discussed the ramifications of these decisions from many perspectives.

## **Human Rights at the UK Supreme Court**

(November 5, 2009. Speaker: Michal Fordham QC)

Michael Fordham QC, a leading public law and human rights barrister in London spoke about recent trends in human rights cases before the UK Supreme Court. He has appeared in more than 30 cases in the UK's Supreme Court (formerly known as the House of Lords), including many interventions for non-governmental organizations, beginning with Amnesty International in the Pinochet cases (Pinochet [2000] 1 AC 61; and Pinochet (No.3) [2000] 1 AC 147). He led the interventions for JUSTICE in the anti-terrorism control orders cases (MB v SSHD [2007] UKHL 46; JJ v SSHD [2007] UKHL 45; AF v SSHD [2009] UKHL 28) and in the asset-freezing case (A v HM Treasury, pending: the first appeal argued in the new Supreme Court), among many others.

## **Symposium: the role of interveners in public interest litigation**

(November 6, 2009. Speakers: Hon. Justice Dennis O'Connor, Hon. Frank Iacobucci, Hon. Justice Stephen Goudge, Frank Addario, Nathalie Des Rosiers, R. Douglas Elliott, Clive Baldwin, Michael Fordham, Q.C, Paul Collins (author *Friends of the Court*), Michal Fairburn, among others )

Public interest litigation has a significant impact on public policy in Canada. Although Charter and other public interest litigation is most often commenced by individual claimants who are challenging laws that affect them individually, the test case litigant is often supported or opposed by powerful interveners such as governments and advocacy organizations representing groups in society seeking to be heard on the significant human rights issues of the day. The role that all of these interveners play in court and in the public discourse surrounding these cases was the subject of this one day symposium. The symposium's outstanding faculty of professionals and academics included leading jurists and representatives of government interveners, public interest groups and the private bar. International panelists explored the roles that interveners take in jurisdictions outside of Canada. The symposium also highlighted new research on the impact of interveners at the Supreme Court of Canada conducted by the University of Toronto, Faculty of Law.

## **Prime Minister of Canada et al. v. Omar Khadr webcast**

(November 13, 2009. Speakers: Cheryl Milne and Diana Juricevic )

Students and Faculty were welcomed to watch the live webcast of the argument at the Supreme Court of Canada in *Prime Minister of Canada, et al. v. Omar Khadr*. The Asper Centre and the International Human Rights Program (IHRP) had been granted standing in the case as interveners with Human Rights Watch. Cheryl Milne and Diana Juricevic were on-hand to answer questions and provide commentary.

## **The Rights of Canadian Citizens Abroad**

(November 24, 2009. Speakers: Paul Champ, Audrey Macklin, Ed Morgan, Lorne Waldman)

Organized by the student working group this workshop featured a distinguished panel of practitioners and academics addressing complex issues such as: What duties does the Canadian government owe to Canadian citizens when they are outside of the country? Is there such a thing as a legal duty to protect citizens from harm, or seek their repatriation when they have suffered harm? What are the rules, post *Hape* and *Khadr*, governing the extraterritorial application of the *Charter*, as well as the impact of international law on those rules? What are

the implications of anti-terrorist measures that involve information sharing with governments that may engage in coercive practices on Canadian citizens abroad?

### **Book Launch: Albie Sachs, *The Strange Alchemy of Life and Law***

(January 15, 2010 Book Launch)

Should a judge be an instrument of pure, detached reason, or a person imbued with human empathy? Albie Sachs, appointed by Nelson Mandela to South Africa's first Constitutional Court, argues that reason and passion are inextricably linked in the judicial function, in his most recent book. The talk offered a unique insight into the judicial philosophy of one of the world's most prominent constitutional judges.



### **The Khadr Decision: A just result?**

(February 11, 2010: Audrey Macklin, Kent Roach, David Schneiderman, Cheryl Milne)

The Supreme Court of Canada released its unanimous decision in *Prime Minister of Canada et al. v. Omar Khadr* on Friday, January 29, 2010. It declared that the Canadian government is violating Omar Khadr's right to life, liberty and security under the *Charter of Rights and Freedoms*. The court denounced the use of torture in the form of sleep deprivation by U.S. authorities against Mr. Khadr when he was 15 years old in order to soften him up for interrogations conducted by Canadian authorities. However, it stopped short of ordering what was being sought – the request by the Canadian government to release him from Guantanamo and return him to Canada – citing Crown prerogative in regard to foreign relations. This session discussed the implications of this decision and issues such as: What is the appropriate role for the judiciary in the circumstances of this case? Is a declaration of injustice a just remedy? What difference does it make that Omar Khadr was a child at the time of the initial violations and the allegations against him?

### **Overdue Update or Big Brother? Open Access and Cyber Surveillance**

(February 25, 2009. Speakers: David Murakami Wood, Lisa Austin, Robert Hubbard)

As rapidly advancing communication technology transforms so many aspects of human interaction it is crucial for public safety that investigative powers remain relevant to the rapidly evolving methods of crime. However, these methods must not too broadly infringe on the rights and liberties of Canadian Citizens. In 2009, two bills, C-46 and C-47, were introduced with the intent of updating the state's authority to access electronic communications data. These bills were controversial, provoking very different responses from the law enforcement and privacy communities. The Asper Centre and the Canadian Civil Liberties Association co-hosted a workshop to explore the important issues associated with giving law enforcement easier access to electronic communications data. Topics included: the emerging realities of internet privacy, informational privacy, and defence and crown perspectives on proposed "lawful access" legislation.

### **Criminalization of Polygamy: constitutional or not?**

(March 23, 2009. Speakers: Lorraine Weinrib, Mohammed Fadel and Cheryl Milne)

The upcoming reference at the British Columbia Supreme Court regarding the constitutionality of s. 293 of the Criminal Code which prohibits polygamy in Canada has attracted wide interest, and will involve various interveners, including the Asper Centre together with the Canadian Coalition for Children and Youth, and other religious, women's and children's, and civil liberties organizations. Cheryl Milne moderated a panel who addressed: the issue of freedom of religion with respect to polygamy, the treatment of children and vulnerable persons by religious institutions, the questions of religious framing of the family with reference to polygamous communities, polygamy under Islamic law and associated issues freedom of religion.



# Clinical Legal Education

**Clinic Students:** Brendan Morrison, Jamie Baxter, Lindsay Beck, Jacqueline Wilson, Ryan Liss, Y.Y. Chen, Kim Potter, Joe Heller, Shireen Sondhi

Led by Executive Director, Cheryl Milne, the students had the opportunity to work on the first litigation conducted by the Centre. The seminar format combined substantive discussion on advocacy strategies, research and legal drafting skills and litigation procedures with student led discussion on the individual projects. Students were required immediately to jump into the pressure of litigation due to filing deadlines early in the term. They provided much needed support to the creation of the court filings, including the factum and books of authorities in *Conway v. Her Majesty the Queen*. In addition to interacting with our guest speakers, students were also able to observe legal argument in cases before the Supreme Court and the Ontario Court of Appeal, meeting with the judges after the Court of Appeal hearing.

## Clinic Projects:

- ◆ *Conway v. Her Majesty the Queen*: Team of 4 students worked in our first intervention before the SCC doing background research, participating in a litigation strategy meeting with counsel Prof. Kent Roach and Cheryl Milne; a larger group helped to put together all the materials for filing with the SCC (proofreading, copying, binding, etc.). The students travelled to Ottawa to observe the legal arguments while the remaining students in the class watched the webcast in Toronto. This group also assisted in the preparation of material for our intervention in *City of Vancouver v. Ward*.
- ◆ *Withler v. Canada*: Two students provided support to LEAF, with help from Prof. Denise Réaume, in their intervention in *Withler* case, heard in March at the Supreme Court. Students provided legal research in respect of the comparator group analysis in equality rights cases before the Supreme Court of Canada to assist in their motion to intervene and the factum filed in the case.
- ◆ ARCH Disability Law Centre: A student conducted legal research to assist with advice to their client about the best legal procedures to bring forward a discrimination claim related to voting rights of persons with visual disabilities.
- ◆ Law Commission of Ontario: A student worked with the Commission on a background paper for a law reform project looking at the rights of marginalized workers and how Canada's federal structure contributes to their marginalization. The student was then able to expand this research into a SYRUP paper the following term under the supervision of Kerry Rittich.
- ◆ *Canada v. Omar Khadr*: A student provided research to support our intervention in the *Khadr* case. She also completed a second term practicum during which she provided research for our intervention in the *Caron* case heard in April. Students also travelled to Ottawa to observe the arguments.

## Volunteers:

Students from the clinic have been helpful volunteers throughout the year in respect of our workshops and preparation of materials for filing with the Supreme Court. In particular, Brendan Morrison and Ryan Liss provided additional support to assembling motion material for the Court.

## 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

### **The Charter and Canadian Citizens Abroad Working Group**

This working group examined how the Charter applies to the actions of Canadian Security Intelligence Service (CSIS) agents abroad (such as in the case of Omar Khadr, or Abousfian Abdelrazik, where CSIS's actions have been scrutinized by the Security Intelligence Review Committee), as well as the issues raised by several recent cases where Canadian citizens (such as Suaad Mohamud) have been detained abroad and have received little or no assistance from the Canadian government. The group helped to organize our fall workshop on these topics, assisted with the Khadr workshop held shortly after the decision in this case, and put together a presentation for the LAWS Global Citizenship Conference on the Khadr case, along with practicum student Esther Roche.

Student Members: Justin Basinger, Sarah Smith, Chris Ogilvy, David Colman, Renee Fontaine  
Faculty Support: Sujit Choudhry, Audrey Macklin

### **Emerging Constitutional Issues Working Group**

Students in this working group assisted with our Interventions Symposium in the fall and helped to organize our most recent workshop on the Polygamy Reference case. They pulled together a number of articles about this year's accomplishments which were published in our year end newsletter.

Student Members: Kathryn McGoldrick, Renatta Austin, and Samantha Green (Fall Term)  
Faculty Support: Cheryl Milne & Advisory Group

### **The Internet Surveillance Working Group**

This working group examined how the Charter applied to the proposed C-46 bill and C-47 bills, which would have required ISPs to install new surveillance capabilities, and disclose subscriber information (name, address and email address) without a court order, thereby granting police far-reaching powers to obtain internet transmission data. While academics recognize the gap in Canada's existing privacy framework with regards to modern technologies, they also contend that the subscriber information could be would provide access to information that would otherwise necessitate a warrant. Students in this working group did background research for a brief regarding the constitutionality of the bills and the impact of those bills on the s. 8 privacy rights of Canadians. The bills were not reintroduced after prorogation, however the students' work is retained for use in a future brief in the even the bills are resubmitted.

Student Members: Kerri Lui, Kenneth Raddatz, Ryan Walker, Tatiana Lazdins, Ellen Zheng  
Faculty Support: Lisa Austin

## Wilson Moot

Lorraine Weinrib and Cheryl Milne provided coaching to the students who participated in this year's Wilson Moot involving a problem which engaged both s.15 and s.7 of the Charter. Dan Rohde (first place oralist), clinic student Lindsay Beck (second place oralist), Rebecca McConchie and Dave Forsayeth won first place.

## JD/MSW Practicum Placement

This year Esther Roche has been placed with the Centre and equally proved herself invaluable with her multidisciplinary perspective on constitutional rights. Her major project this year was sifting through the research on polygamy that will inform our position in the BC Polygamy Reference case.

## Student Interns and Research Assistants

Renatta Austin (Web Support), Tatiana Lazdins (Summer Intern), Tom McConnell (Research Assistant), Claire Webster (Volunteer)

# 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:*

**680 News :** Executive Director Cheryl Milne comments on age discrimination challenge to zero-tolerance alcohol law for young drivers

**The National Post :** Professor Lisa Austin comments on the Privacy Commissioner's Report on the background checks conducted on potential jurors in criminal trials. (Oct 10, 2009)

**CTV News :** Professor Audrey Macklin commented on the military commission proceedings on the Omar Khadr case. (Friday November 13, 2009)

**CTV News :** Executive Director Cheryl Milne commented on the arguments in the Supreme Court of Canada in *Prime Minister of Canada v. Omar Khadr*. (Friday November 13, 2009)

**Globe and Mail :** Chair of the Asper Centre Advisory Group, Professor Sujit Choudhry commented on the *Khadr* decision. (Friday January 29, 2010)

**La Presse :** Executive Director Cheryl Milne comments on the *Khadr* decision. (30 January, 2010)

**Globe and Mail :** Professor Audrey Macklin, IHRP Acting director Diana Juricevic and Asper Centre Executive Director Cheryl Milne commented on the *Khadr* decision. (February 1, 2010)

**Globe and Mail :** Faculty members on the Asper Centre Advisory weighed in on the government's announcement that they will not seek Omar Khadr's return. (Wednesday February 3, 2010 )

## Website Updates

The resources available on our website have increased steadily over the past year. Students have been engaged to obtain the Supreme Court, and Cross-Canada Appellate Court Case materials that have been made publicly available via our website. The site has also served as a resource for collaborators on the cases in which the Centre has been granted intervener standing, and as a medium to highlight the research of our constitutional faculty. We have made virtually all of the workshops and symposia webcasts available on our website. See list below.

### Webcasts Available on our Website [www.aspercentre.ca](http://www.aspercentre.ca)

- ◆ The *Khadr* Decision: A Just Result? February 11, 2010
- ◆ Overdue Update or Big Brother? Lawful Access and Cyber Surveillance, Feb. 25, 2010
- ◆ *Grant, Harrison, Shepherd & Suberu*: The Supreme Court Decisions of the Summer of 2009 , September 30, 2009
- ◆ Michael Fordham, QC: Human Rights at the UK Supreme Court, Nov. 5, 2009
- ◆ Role of Interveners in Public Interest Litigation, November 6, 2009
- ◆ The Charter Rights of Canadian Citizens Abroad, November 24, 2009

# Research and Writing

## Workshop Papers

### Interventions Symposium

Ben Alarie and Andrew Green, *Interventions at the Supreme Court of Canada: Accuracy, Affiliation, and Acceptance*

Nathalie Des Rosiers, *Interventions*

Paul M. Collins, Jr., *Interest Group Participation in the United States Supreme Court*

Michael Fordham QC, *Public Interest Interventions in the UK Supreme Court: Ten Virtues*

### Grant, Harrison, Shepherd & Suberu: The Supreme Court Decisions of the Summer of 2009

Hamish Stewart, "The Grant Trilogy and the Right Against Self-Incrimination" (2009) 66 *Criminal Reports* (6th) 97

Jonathan Dawe, *Charter Detention and the Exclusion of Evidence after Grant, Harrison and Suberu*, (2009)

All are available on our website.

## The Upcoming Year

### Clinical Legal Education

The Fall clinic is fully enrolled. Students will be working on the *Reference re. s.293 of the Criminal Code* (Polygamy Reference) as well as other projects in partnership with organizations such as L.E.A.F. and the Law Commission of Ontario to obtain a broad exposure to advocacy work.

### Workshops and Conferences

- ♦ Who Belongs? Rights, Benefits, Obligations, and Immigration Status : On September 24-25 the Asper Centre is co-hosting this conference on the rights and interests of immigrants in Canada.. Immigration status – whether it be citizenship, permanent resident status, visitor status, temporary workers status, “no status” – plays an important role in how rights, benefits and obligations are allocated. Rules regarding voting rights, access to social services, employment and property ownership often make distinctions on the basis of immigration status. What are the consequences of such distinctions? Are they appropriate?
- ♦ UN Security Council Resolution 1267: The Centre, jointly with the IHRP and the Canadian Civil Liberties Association, is holding a half day symposium on November 19th on the “no fly” list established by the UN for suspected terrorists. Key note speaker will be UN Ombudsperson, Judge Kimberly Prost.
- ♦ The Centre is planning a half day event on costs and funding for Charter litigation for the winter term.

### Working Groups

The Centre plans to involve law students in three difference working groups over the next year. A group of students submitted 2 proposals to conduct a working group project on the G20 Summit with plans to conduct research and hold workshops for students. Another group of 4 students will be our co-editors for the Newsletter for the Centre and a third group will likely be working on a policy brief in relation to Bill C-5, *An Act to Amend the International Transfer of Offenders Act*.

# About the Asper Centre

## 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

The goals for the David Asper Centre were established during the Centre's early strategic planning stages. This planning included participation from the constitutional bar, our advisory group and constitutional faculty, the NGO community, other program directors within the faculty, and students at the University of Toronto Faculty of Law.

**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.



# Advisory Group

The Centre's Advisory Group draws from a distinguished Faculty with expertise in constitutional law:

## Current Members



**Professor Sujit Choudhry (Chair)** 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. He has authored and edited several books, and has published articles in journals such as the *Canadian Journal of Law and Jurisprudence*. Professor Choudhry also sits on the Board of Editors of the *International Journal of Constitutional Law*, the Editorial Board of the *Constitutional Court Review* and the Board of Directors of Legal Aid Ontario. He provides constitutional advice to a broad range of public sector and private sector organizations, is extensively involved in public policy development, and has served as counsel in groundbreaking constitutional cases at the Supreme Court of Canada.



**Professor Kent Roach** holds the Prichard-Wilson Chair of Law and Public Policy. His research interests include the comparative study of miscarriages of justice, comparative 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* 3<sup>rd</sup> ed (with Robert Sharpe). He has written and published over 110 articles and chapters worldwide. Professor Roach also participated in the Ipperwash and Goudge inquiries and served as counsel for Aboriginal and civil liberties groups in several landmark Supreme Court of Canada cases.



**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.

## Former Member



**Lorne Sossin** was Professor, an Associate Dean, and the inaugural Director of the Centre for the Legal Profession, at the Faculty of Law and has recently been appointed the Dean of Osgoode Hall Law School. Dean Sossin has authored and edited numerous articles and books, including *Boundaries of Judicial Review: The Law of Justiciability in Canada*, *The Future of Judicial Independence*, and *Parliamentary Democracy in Crisis*. He has served as Research Director for the Law Society of Upper Canada's Task Force on the Independence of the Bar, and 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. Dean Sossin has also served on the Boards of the Law Foundation of Ontario and Pro Bono Law Ontario.



# Acknowledgements

The Centre could not have conducted its activities this year without the active participation and guidance of many faculty members, students, alumni and legal practitioners. Many gave of their time to provide insight and advice, and to assist with the numerous events. We thank them for their input and support.

## Faculty Members and Staff

Ben Alarie	Ed Morgan
Alexis Archbold	Chantal Morton
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## Thanks to our Pro Bono Counsel

John Norris  
Brydie Bethel  
Kelly Doctor, Sack Goldblatt Mitchell LLP  
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