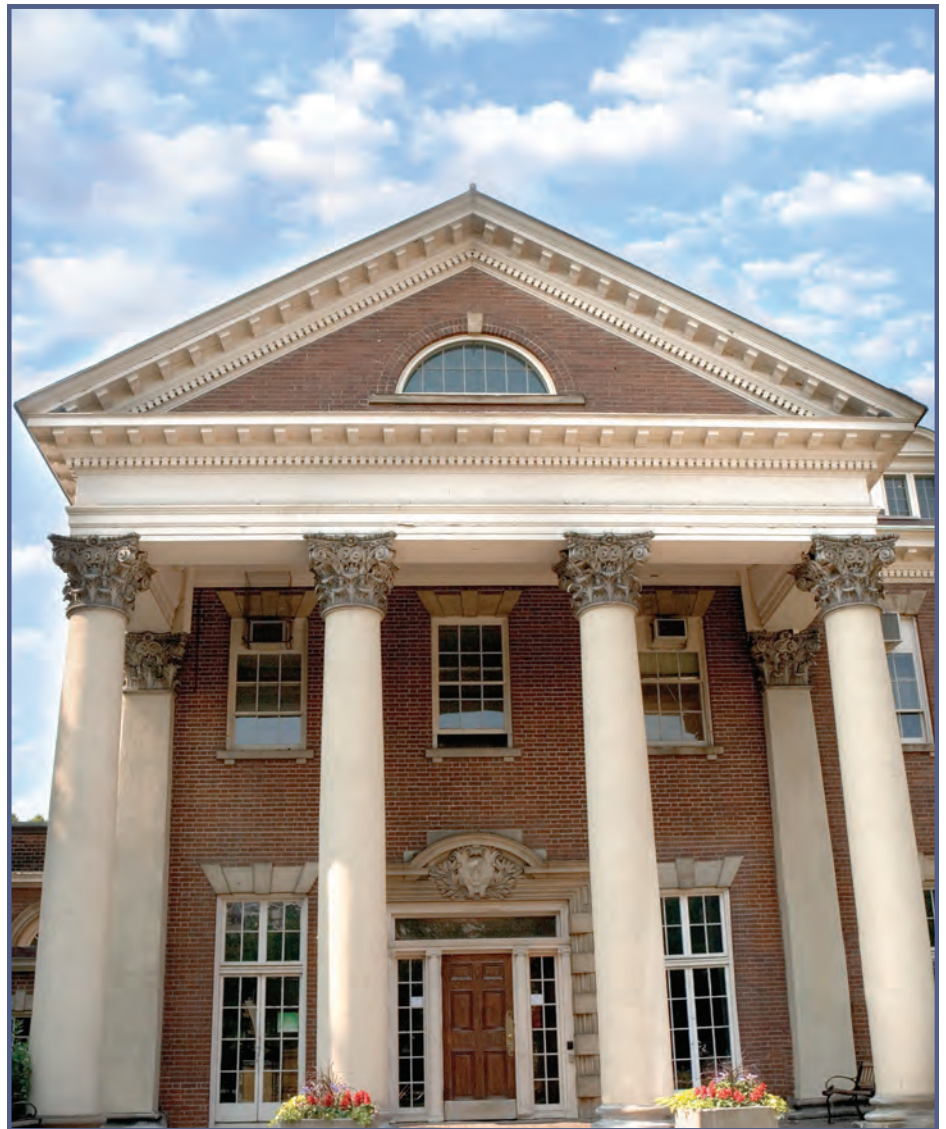




David Asper Centre for Constitutional Rights UNIVERSITY OF TORONTO

Annual Report 2011-2012



Realizing Constitutional Rights through Advocacy, Education and Academic Research

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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 areas of constitutional rights in Canada. The Centre aims to play a vital role in articulating Canada's constitutional vision to the broader world. The cornerstone of the Centre is a legal clinic that brings together students, faculty and members of the bar to work on significant constitutional cases and advocacy initiatives. The Centre was established through a generous gift from UofT law alumnus David Asper (LLM '07).

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.

From the Executive Director

As I write this I am thinking about the paper that I am presenting at the upcoming Association for Canadian Clinical Legal Education conference in Winnipeg. I plan to talk about the nuts and bolts of designing and implementing the Asper Clinic - adapting clinical pedagogy which is more often suited to clinical programs with direct client representation, incorporating my social work perspective through the adoption of approaches from social work practicum models, and selecting cases that meet the goals set out in the Centre's strategic plan while offering meaningful experiential learning opportunities for students. A key part of the integration of the clinic within a law faculty that values doctrinal and theoretical approaches to the study of law, is the successful engagement of faculty members in the clinic's casework. Sounds like a lot to say, and after four years it is instructive to me to reflect on our successes and the areas that are still in development.

While last year we focused on the Polygamy Reference as our only intervention, this year we intervened in eight appeals altogether (five were grouped together under one legal argument in regard to jury vetting and another two were heard together by the Ontario Court of Appeal in respect to jury representation, for three separate legal arguments). Professors Lisa Austin and Kent Roach worked with students in our interventions before the Supreme Court and the Ontario Court of Appeal.

Where we continue to toil without as much success is in the area of research. We are grateful for the patience and efforts of Professor David Schneiderman in our applications for research grants. We also are moving in a positive direction with help of Professor Trudo Lemmens in the publication of a book of the papers from the AHRA Conference.

I believe that the reputation of the Centre draws on all these elements to produce the success that we continue to have in our endeavours. The fact is that this is the only Centre of its kind in Canada and can serve as a model for student learning and constitutional rights advocacy. While only four years in existence, it is indeed on the radar screen of the constitutional bar, rights advocates as well as appellate courts.

I was most gratified to hear David Asper's response to a report on our work: "I know I keep saying it, but it makes me feel so proud to see what you and the team are doing."



Cheryl Milne, LL.B, MSW
Executive Director

Advocacy and Litigation

***Downtown Eastside Sex Workers* and the test for public interest standing**

This appeal heard by the Supreme Court of Canada on January 19, 2012, involves a challenge to a number of sections in the *Criminal Code* pertaining to prostitution, but the appeal from the British Columbia Court of Appeal focused on the standing of the organization and individuals as public interest litigants. Of the ten interveners who filed legal arguments in the case, the Asper Centre was one of only four who were permitted to make oral argument. Professor Kent Roach presented the Centre's argument for a revised test for public interest standing in *Charter* litigation.

The Centre argued that the test for public interest standing should be made consistent with the inherently systemic nature of remedies under s.52 of the *Charter*, as distinct from individual remedies available under s.24. The requirements that litigants be specially prejudiced by impugned laws, or that they stand to receive a personal remedy, the Centre submitted, are not necessary. The Centre submitted that its proposed remedy-focused approach to public interest standing would avoid unnecessary

threshold litigation over standing. The test recognizes that all s.52 remedies are inherently systemic and that the public has a general interest in having the constitutionality of laws assessed. As of July 2012, the Supreme Court's judgment is pending.



Jury Vetting Cases: the privacy rights of potential jurors

The Supreme Court heard the appeals in *R v Davey*, *R v Cardoso*, *R v Yumnu*, *R v Emms* and *R v Duong* - what have collectively been called the Jury Vetting Cases - on March 14-15, 2012. The Asper Centre was granted intervener status and was represented by Professor Lisa Austin and Executive Director Cheryl Milne who presented the oral argument. The appeals were on four murder charges and one fraud charge in which the police performed background checks on prospective jurors for the benefit of jury selection by Crown prosecutors. The Ontario Court of Appeal dismissed all the appeals stating that there was no miscarriage of justice, as the vetting did not affect the fairness of the trials.

The Asper Centre's position was that the actions of the State, as represented by the police and prosecutors, interfered with the juror's reasonable expectation of privacy and that this brought the administration of justice into disrepute. The Centre requested that the Court make a clear statement condemning these actions as incompatible with an effective justice system and contrary to the *Charter* rights enjoyed by all Canadians.

Section 8 of the *Charter* states: "Everyone has the right to be secure against unreasonable search or seizure." The Centre argued that the authorities breached jurors' privacy rights by conducting unauthorized searches. Government agencies hold personal information, but this did not mean that the information could be used and disseminated without oversight and permission. Although there is not an absolute right to privacy in the *Charter*, the Centre submitted that there is a duty on the state to balance the legitimate needs of investigation with the interests of private citizens. The people being investigated were potential jurors being called on to perform their civic duty. This intelligence was not shared with the defence representatives.

The Asper Centre also argued that if the State wishes to delve into the lives of jurors, any such

search must be a reasonable one; the vetting of jurors in these cases was a fishing expedition. Finally, the Centre argued that the systemic breach of juror privacy rights violates the rule of law and brings the administration of justice into disrepute. Jurors' personal information is



Cheryl Milne and Lisa Austin at the hearing for the Jury Vetting Case

private. This keeps them safe from possible tampering and reprisal. Unadulterated access to private information would remove confidence in anonymity and damage public perception of the justice system.

The Centre requested the Court to follow the recommendations of Ontario's Information and Privacy Commissioner in clarifying when it is appropriate to conduct background checks. It entreated the Court to censure State investigations that go beyond legal requirements. Jurors are third parties in disputes and, when their rights have been violated, have little recourse. The Centre advocated that the Court define limits on juror investigation. As of August 2012, the judgment was pending.

Kokopenace and Spears: jury representativeness

In its first case at the Ontario Court of Appeal, the Asper Centre was granted intervener standing with the consent of all parties including the Attorney General for Ontario. At issue is the representativeness of juries, particularly in relation to First Nations people living on reserves.

The Centre intervened to address the primary issue raised by the Appellants – the lack of representativeness of the juries chosen at the trial and the application of the *Charter* to this claim and to the remedy sought. The Centre's submissions focused on the application of s. 15(1) of the *Charter* to the claim of discrimination advanced by the Appellants. The Appellants' claim was advanced on behalf of the Appellant Kokopenace directly and on behalf of the potential jury members excluded by jury selection practices that resulted in the systemic exclusion of on-reserve Aboriginal persons from the jury rolls in both the Kenora District and Simcoe County.

The Centre further submitted that the Appellants' claims under s. 11(d) and (f) of the *Charter* to a fair trial by an impartial jury are also informed by the s. 15 analysis with its focus on the values of equality and dignity which are applicable to all of the rights under the *Charter*. The Centre supported the Appellants' requested s. 24(1) remedy of an order for new trials, given the circumstances of the case and its context in a legacy of discriminatory treatment of Aboriginal persons in the criminal justice system. As of August 2012, the judgment was pending.

Polygamy Reference

While the case was the work of 2010–2011, the Court rendered its decision in November, 2011. The decision of the British Columbia Supreme Court in the Polygamy Reference case makes a strong statement respecting the rights of children and the state obligation to protect them from harm, key aspects of the arguments made by the Asper Centre and the Canadian Coalition for the Rights of Children. Chief Justice Bauman also relies extensively on the expert evidence of Professor Rebecca Cook on the international law and obligations of Canada to protect women and children from harm. The decision is not without controversy, particularly given that the parties have chosen not to appeal to a higher level of court. It remains the most comprehensive analysis of the constitutionality of the prohibition, but only as a trial level ruling.

AHRA Conference

Looking for Solutions: *Assisted Human Reproduction Act*

In the *Reference re Assisted Human Reproduction Act* (2010 SCC 61), the Supreme Court of Canada issued a divided 4-4-1 opinion that declared several provisions of the federal *Assisted Human Reproduction Act* (AHRA) *ultra vires*. The sections that were found to be unconstitutional were, in general, provisions deemed to be related to healthcare, i.e. a provincial power.

On November 4th and 5th, the Health Law Group, the Faculty of Law and the David Asper Center for Constitutional Rights hosted a conference on the implications of this recent decision. The Equality Rights and Assisted Human Reproduction Working Group assisted with the conference and reviewed the sessions.

The sessions included discussions on federalism and the regulation of health care, family law and reproductive rights, empirical evidence and ethics, and international trends in the regulation of assisted human reproductive technologies. Speakers included University of Toronto professors Colleen Flood, Trudo Lemmens, Carol Rogerson, and Ian Lee, as well as many distinguished scholars visiting from other Canadian and international institutions.

The highlight of the conference was the keynote dialogue between Preston Manning, leader of the previous opposition Reform Party of Canada; Carolyn Bennett, Liberal MP for St. Paul's; Peter Hogg, resident scholar at Blake, Cassels & Graydon LLP; and Alison Motluk, a freelance journalist who has published extensively on fertility laws and assisted reproduction. TVO's Steve Paiken guided the discussion and asked challenging questions of the expert panelists.

The conference introduced many of the broad implications that reproductive regulation (or lack thereof) has had on Canadians and their health. It tackled complex questions such as the rights of a donor-conceived child, the rights of a surrogate mother and the challenges of law-

*Peter Hogg, Carolyn Bennett, Preston Manning,
Steve Paiken and Alison Motluk on the AHRA*



making in such a hype-fuelled environment. Moving forward, there are no clear answers regarding how to balance the competing interests at play in reproductive regulation. Perhaps the only thing that is clear is that we must indeed move forward. Papers from the conference will be published in a forthcoming book edited by Trudo Lemmens, Cheryl Milne and Ian Lee and published by U of T Press. (Text by Tatiana Lazdins)

Panels and Workshops

Lawyers and the Media: In the Public Interest

(November 23, 2011. Speakers: Julian Falconer, Partner, Falconer Charney LLP; Urszula Kaczmarczyk, Senior General Counsel, Immigration Law Division, DOJ; Tracey Tyler, Legal Affairs Reporter, Toronto Star; Prof. David Schneiderman, Faculty of Law; Moderated by Paul Schabas, Partner, Blake Cassels & Graydon LLP)

The media often shows intense interest in the court cases that shape social policy in Canada. Constitutional and human rights related cases such as the recent *Insite* decision, the *Polygamy Reference* Case, *Bedford v Canada* (prostitution challenge), as well as a number of national security cases have been reported on, debated and championed by journalists and commentators in all forms of media across Canada. What is the role that lawyers play in the public debate of the issues in the cases? To what extent do the media influence the outcomes, if at all? How can the media's interpretation of decisions affect public perception? This panel addressed these and other questions—both practical and ethical—on public interest law and the media.

Reflections on the *Polygamy Reference*

(January 17, 2012. Speakers: Profs. Brenda Cossman, Mohammad Fadel, Hamish Stewart, Lorraine Weinrib, Carol Rogerson, Rebecca Cook, David Schneiderman, and moderator Cheryl Milne.)

The British Columbia Supreme Court released its decision in the *Ref. Re. S.293 of the Criminal Code of Canada (Polygamy Reference)* on November 23, 2011. With a length of over 280 pages, the case provides the most comprehensive judicial record on the subject of polygamy ever produced. A number of academics from the Faculty of Law weighed in on the decision, offering diverse perspectives on the constitutional arguments, international law, procedures and evidentiary issues in the case.



The Omnibus Crime Bill

(January 23, 2012. Speakers: Prof. Anthony Doob, FRSC, Centre for Criminology; Clayton Ruby, CM, LLD; Executive Director Cheryl Milne; and moderator Prof. Vincent Chiao, Faculty of Law.)

Bill C-10, the *Safe Streets and Communities Act*, includes, among other reforms, new mandatory minimum sentences, the elimination of conditional sentences for a range of offences, and a stricter approach to youth criminal justice. The reforms received severe criticism from civil liberties groups and from the provincial governments who will have to internalize a portion of the high costs entailed. This panel focused on the wisdom of the new policies in light of social science research, the practical effect of the reforms, and the impact on young offenders. Prof. Doob argued that the new policies are empirically unsupported; they are dishonest to the extent that they target “public safety,” and they contradict long-standing Canadian criminal justice values. Clayton Ruby criticized the reduced availability of conditional sentences. He also highlighted some of the practical difficulties in drafting sensible and proportionate mandatory minimum sentencing, and the absurdities of the “thresholds” for drug offences. Cheryl Milne focused her discussion on the youth justice issues in the bill. She said the government was careful in its wording to avoid overstepping recent Supreme Court precedent, however the values behind the amendments appear to violate the basic principle of reduced culpability for minors.

Clinical Legal Education

Clinic Students: Ben Liston, Ben Oliphant, Vince Wong, Emily Shepard, Farnaz Mirshahi, Eva Tache-Green, Sarah Yun, Chris Cairns, Gunwant Gill, Thomas Sanderson

Clinic Projects:

2 students (Ben Oliphant and Vince Wong) worked on *AG Canada v Downtown Eastside Sex Workers* appeal at the SCC.

2 students (Chris Cairns and Gunwant Gill) worked on our intervention in the Jury Vetting appeals at the SCC.

2 students (Tom Sanderson and Sarah Yun) worked on the factual record for the *Kokopenace* and *Spiers* appeals at the Ontario Court of Appeal and then stayed on for the second term practicum to work on the factum.

4 students (Ben Liston, Emily Shepard, Eva Tache-Green and Farnaz Mishrahi) provided research on potential *Charter* issues in cases at the Refugee Law Office.

The intervention itself was an amazing experience. We had the privilege of working closely with Cheryl Milne and Kent Roach in developing our core arguments... We also suffered the indignity of having the Attorney General reject us, only to file a response and have the Supreme Court let us in!

- Vince Wong on the *Downtown Eastside Sex Workers* case

Clinic speakers:

- ♦ Zachary Green of the Attorney General of Ontario's Constitutional Law Branch and Graeme Norton of the CCLA presented on policy advocacy and review.
- ♦ Douglas Elliott of Roy Elliott O'Connor LLP presented on the test case client.
- ♦ Hon. Justice Eileen Gillese of the Ontario Court of Appeal presented on appellate advocacy
- ♦ Susan Barker guided the students through research on legislative facts, an essential component to any constitutional challenge.
- ♦ Students also attended the Lawyers and the Media workshop as part of the class, which included speakers Julian Falconer, Urszula Kaczmarczyk, Tracey Tyler, Prof. David Schneiderman and Advisory Group Member Paul Schabas (*see page 6*)

Faculty and staff support:

- ♦ Prof. Lisa Austin – donned borrowed robes and upgraded her LSUC status to join Cheryl at the Supreme Court on the five Jury Vetting appeals heard by them in mid-March.
- ♦ Prof. Kent Roach – represented us once again before the Supreme Court in *AG Canada v Downtown Eastside Sex Workers United Against Violence*. He has taken on the role of Advisory Board Chair.

Pro Bono assistance:

- ♦ Martha Healey of Norton Rose – our pro bono Ottawa agent for all our SCC interventions; her contribution has been substantial including review of materials, and organizing and filing the copious amounts of paper still required by the Court, including during the Christmas holidays.

Student Engagement - Working Groups

Crime Bill Working Group

JD and LLM students: Arina Joannis (student leader), Tina Taeput, Krista Nerland, Clara Morrissey, Adam Sproat, Maya Ollek, Meghan Dureen, Liz Winter, Vlad Duta, Kate Dalglish. Faculty consultant: Kent Roach. Students researched legal issues arising from the proposed crime legislation being put forward by the federal government. Of concern were provisions relating to mandatory minimum sentences as well as detention. The group's primary work product was *Bill C-10: Submissions to the Standing Senate Committee on Legal and Constitutional Affairs*. The report addressed four primary issues: (1) misperception of public support for harsh sentencing; (2) the discriminatory effect of removing conditional sentencing options; (3) changes to the *Youth Criminal Justice Act*; and (4) mandatory minimum sentences. The Centre strongly recommended that Bill C-10 not be passed. It received Royal Assent on March 13, 2012.

Equality Rights and Assisted Human Reproduction Working Group

Students: Tatiana Lazdins (lead), Emma Carver, Hannah Kingdom, Janet Lunau, Teresa Maclean, Daniella Murzynka. The Equality Rights and Assisted Human Reproduction Working Group organized, in collaboration with the Health Law Group, the conference, "Looking for Solutions: Assisted Human Reproduction Act" (*see page 3*). The Working Group also provided research support to its partner organization, the Women's Legal Education and Action Fund (LEAF), on family law issues dealing with donor-assisted conception, and on equality rights issues arising out of the *Assisted Human Reproduction Act* and other relevant provincial legislation.

Bill C-4 Human Smuggling Working Group

Students: Cate Simpson, Webnesh Haile and Rebecca Sutton, Farnaz Mirshahi, Emily Shepard, Ben Liston, Rebecca Sutton and Cate Simpson This working group provided background research on the impact of Bill C-4. However, before a brief could be drafted, the government withdrew this Bill and put forward Bill C-31 that eventually passed. Professor Audrey Macklin utilized the research conducted by the students in her presentation before a Senate Committee on behalf of the Asper Centre. A summary of Prof. Macklin's submissions, "Making Sense of an Immigration Omnibus," can be found on the Asper Centre website.



MV Sun Sea, Credit DND 2010

Lawful Access Working Group

Two students (Vlad Calina and Noemi Chanda) volunteered to provide background research for a joint brief that we hope to complete with Canadian Civil Liberties Association and Canadian Internet Policy and Public Interest Clinic. The research will be used if and when the legislation is back on the table.

Asper Centre Outlook Working Group

Student editors: Esther Oh, Megan Strachan and Rebekah Lauks. The student editors created and edited content for the twice-annual newsletter. Student contributors included: Tatiana Lazdins, Cate Simpson, Rebecca Sutton, Arina Joannis, Megan Strachan, Chris Evans, Promise Holmes Skinner, Michael Da Silva, Radostina Pavlova Stoney Baker, Charu Kumar, Navratan Singh Fateh, and Rebeka Lauks, Ian Kennedy, Vince Wong, Chris Cairns, Azeezah Kanji, Laura Spaner and Jennifer Bernardo.

Student Engagement - Summer 2012

Asper/IHRP Summer Internships

The Asper Centre together with the International Human Rights Program selects up to two University of Toronto law students 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.

This year's recipient, **Janet Lunau**, has spent the summer working in Toronto with the Women's Education and Action Fund (LEAF), an organization that does litigation and education to advance the equality rights of women. Since its founding in 1985, LEAF has intervened in over 150 cases at all levels of court in Canada. Her work for LEAF has included: *Assisted Reproduction; Federalism, Child Support and Child Welfare*; and *Charter Cases Website*.



Photo credit Janet Lunau

Student Research Assistants

Ian Kennedy, Workstudy Program, 2011-12—Ian returned to provide website support through the workstudy program, even working remotely from London while he attended the international program last term.

Louis Century, Research Assistant Summer 2012—Louis is working this summer for the Centre conducting legal research and writing support for the Centre.

Rebeka Lauks, Research Assistant Summer 2012—Rebeka is working part-time for the Centre while also working for the Canadian Civil Liberties Association.

Student Engagement - Mooting

Wilson Moot Win

For the third 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 Denise Cooney, Hayley Peglar, Jeremy Nemers and Michael Sabet won the competition, defeating McGill in the final round before Justice Kathryn Feldman (Ontario Court of Appeal), Melanie Aitken (Commissioner of Competition for Canada and founder of the Wilson Moot), and lawyer Mary Cornish (partner at Cavalluzzo Hayes Shilton McIntyre & Cornish LLP). The team won the top prize for written argument and Michael Sabet came in second place in the oralist category.



Wilson Moot winning team Denise Cooney, Hayley Peglar, Jeremy Nemers and Michael Sabet with Justice Kathryn Feldman of the Ontario Court of Appeal, who judged the final round.

Looking Ahead

Clinical Legal Education and Working Groups

As we await decisions in clinic cases from last year (*Downtown Eastside Sex Workers* on standing; Jury Vetting Cases; *Kokopenace* and *Spears* on jury representativeness), students will prepare applications for leave to intervene in new constitutional appeals before various courts. **During the month of September, Joseph Arvay, QC will be the Asper Centre's inaugural Constitutional-Litigator-In-Residence.** He will mentor clinic students with their case files and provide a public lecture for the law school. Working groups will address immigration legislation and privacy rights & the internet.

Conference

On November 9, 2012, the Asper Centre is hosting a one-day conference, "Charter Litigation and the Use of Social Science Evidence: Developments in 30 Years of Fact Finding." **The Opening Plenary Panel will feature Justice Robert Sharpe (Ontario Court of Appeal); Justice Susan Himel (Ontario Superior Court of Justice - *Bedford v Canada*); and Justice Lynn Smith (British Columbia Supreme Court - *Carter v Canada*).** Workshop topics will include: a theory of constitutional facts; framework for reliability analysis; judging social science evidence—a feminist perspective; linking social science evidence with individual testimony; use of social science in specific cases such as *Polygamy Reference*, *Gosselin*, *R v Bryan*, *Insite*, and more. **Mark your calendar!**

Constitutional Roundtables

This year, the Asper Centre Workshop Series is joining forces with the Law Faculty's Constitutional Roundtables to host monthly talks. The series will include presentations by leading constitutional scholars from Canada and abroad, as well as practitioners who will comment on emerging cases and issues in Canadian constitutional law. Confirmed speakers include Professor Sanford Levinson, University of Texas, as well as Joseph Arvay with Professor Emeritus Wayne Sumner.

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

- ♦ Conference: Assisted Human Reproduction Act (Preston Manning, Peter Hogg, Carolyn Bennett, Alison Motluk and others) (November 4-5, 2011)
- ♦ G20: Lessons Learned, Messages Lost (June 23, 2011)

Research and Writing

Assisted Human Reproduction Act: conference papers and book

The following working papers were presented at the *AHRA* conference and will be published in the upcoming book, *TITLE (CITY: PUBLISHER, EXPECTED RELEASE)*:

- ♦ Trudo Lemmons, “The Supreme Court’s Split View on the Commodification of Reproduction”
- ♦ Karen Busby, “Empirical Research on Surrogacy and its Implications for Law Reform”
- ♦ Ian Lee, “The Assisted Human Reproduction Act Reference and the federal criminal law power”
- ♦ Erin Nelson, “Regulating Assisted Reproduction in Canada: From Troubled Past to Uncertain Future”
- ♦ Colleen Flood and Ryann Atkins, “Regulatory Failure: The Case of the Private-For-Profit IVF Sector”
- ♦ Carol Rogerson, “Determining Parentage in Cases Involving Assisted Reproduction: An Urgent Need for Provincial Legislative Action”
- ♦ Glenn Rivard, “Federal and Provincial Jurisdictions with respect to Health: Struggles amid Symbiosis”

Policy Briefs

- ♦ **Bill C-10: Submissions to the Standing Senate Committee on Legal and Constitutional Affairs (February 13, 2012)**
- ♦ **Research into Bill C-4 immigration reforms eventually used in Audrey Macklin’s Oral Submissions to the Senate Committee on Bill C-31 (April 30, 2012)**

“The radical policy change in Bill C-10 is inconsistent with Canada’s long-standing criminal justice values. Public support for harsher sentencing is a misconception...” - Asper Centre Report on Bill C-10

Asper Centre Awarded



Stephanie McHugh of Hunter Litigation Chambers

2011 Lexpert Zenith Award for Pro Bono:



Brent Olthuis & Stephanie McHugh of Hunter Litigation Chambers worked with the Asper Centre on the *Polygamy Reference*. For their work, “A Voice for Children’s Rights in Polygamy Hearing,” the Asper Centre and Hunter Litigation Chambers jointly received a 2011 Lexpert Zenith Award in the Pro Bono Team or Firm category (Level 1).

Asper Centre in the News

“Bountiful’s girls deserve same decisive action accorded to sled dogs,” *Vancouver Sun* (6 April 2011) discussing Executive Director Cheryl Milne's submissions in the Polygamy Reference case

Dan Gardner, “A fitting way to honour Jack Layton,” *Ottawa Citizen* (24 August 2011) citing the Asper Centre's Constitutional Conventions workshop in a column on honouring Jack Layton.

CTV News Channel (November 2011)—Interview with Executive Director Cheryl Milne on BC Supreme Court’s *Polygamy Reference* decision.

“University of Toronto wins Wilson Moot,” *Legal Post* (28 February 2012)—team included Denise Cooney, Jeremy Nemers, Hayley Peglar and Michael Sabet (second place oralist); coached by Cheryl Milne and Advisory Group Member Lorraine Weinrib.

Kent Roach, “The government v. the Charter,” *Ottawa Citizen* (14 April 2012)—Chair of the Asper Centre Advisory Group on the legacy of the Charter after 30 years.

Audrey Macklin, “World Refugee Day,” CBC Radio (20 June 2012)—Advisory Board member Prof. Audrey Macklin interviewed on CBC Radio's Metro Morning about Bill C-31, the omnibus immigration bill.

Louis Century, “Forcing judges to judge old law erodes democracy,” *Law Times* (30 July 2012)—Asper Centre summer law student on the state of Charter dialogue between the courts and Parliament.

Pro Bono Contributions

Faculty Support:

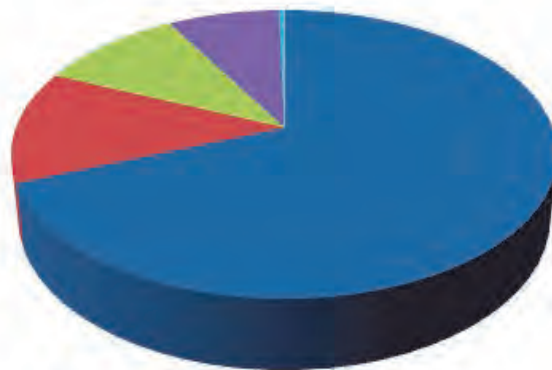
- ◆ Prof. Lisa Austin – in addition to acting as co-counsel at the Supreme Court on the five Jury Vetting appeals, Prof. Austin consulted with the Lawful Access working group.
- ◆ Prof. Kent Roach – represented the Centre in both the Downtown Eastside Sex Workers case at the Supreme Court of Canada and Kokopenace & Spears Appeals at the Ontario Court of Appeal. He has taken on the role of Advisory Board Chair.
- ◆ Prof. David Schneiderman, with assistance from Assistant Dean Archana Sridhar, prepared a SSHRC proposal for research into the role of advocacy, in particular by intervenor groups, in the SCC.
- ◆ Prof. Trudo Lemmens – spearheaded the Conference on the *Ref. Re. Assisted Human Reproduction*, a very successful 2-day conference that will lead to a publication of a book.
- ◆ Prof. Audrey Macklin – provided guidance and support for students researching immigration issues, including the clinic project with RLO, the Working Group on Bill C-4, and the Wilson mooters.

Pro Bono Lawyers:

- ◆ Martha Healey of Norton Rose – our pro bono Ottawa agent for all our SCC interventions; her contribution has been substantial including review of materials, and organizing and filing the copious amounts of paper still required by the Court, including during the Christmas holidays.
- ◆ Brent Olthuis & Stephanie McHugh of Hunter Litigation Chambers – together with the Asper Centre, won a 2011 Lexpert Zenith Award in the Pro Bono Team or Firm category (Level 1) for their work on the *Polygamy Reference*. (see page 5)
- ◆ Paul Schabas of Blake, Cassels & Graydon LLP – serves on our Advisory Group.



Sources of financial contributions



- David Asper Endowment
- Faculty of Law - general in-kind
- Yaremko Endowment
- Pro Bono contributions
- Government work study grant

Advisory Group



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, recently appearing at the Supreme Court in the landmark constitutional remedies case, *City of Vancouver v Ward*. He represented the Asper Centre in *Downtown Eastside Sex Workers* and *Kokopenace & Spears* appeals (awaiting judgment).



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. 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 Weinrib has organized a number of Constitutional Roundtables jointly with the Asper Centre and has consulted on conference planning and the Polygamy Reference.



Professor Yasmin Dawood is an Assistant Professor at the Faculty of Law. Professor Dawood's research and teaching interests include the law of democracy, American and Canadian constitutional law, and democratic theory. She holds a J.D. from Columbia Law School, and an M.A. and Ph.D. in Political Science from the University of Chicago, where she held a Mellon Fellowship and a University Fellowship. She was awarded a Social Sciences and Humanities Research Council (SSHRC) Postdoctoral Fellowship, which she held at the Centre for Ethics, University of Toronto. She received an Honours B.A. in Political Science at the University of Toronto. In addition, Professor Dawood is admitted to the Bar of New York and she practiced law with the firm of Cleary, Gottlieb, Steen & Hamilton LLP in New York. She joined the University of Toronto Faculty of Law in 2009.



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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The Centre would like to acknowledge the invaluable contribution of the many faculty members, staff, students, alumni and legal practitioners who have made our activities and events possible. We would like to thank them for their efforts, insight and support.

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