



Asper Centre E-News

Call for Papers: Constitutional Remedies—Are they effective and meaningful?

DEADLINE: SEPTEMBER 30, 2013

The David Asper Centre for Constitutional Rights invites papers for its upcoming conference, “Constitutional Remedies: Are they effective and meaningful?” on February 28, 2014. The Centre invites papers that stimulate and develop an ongoing dialogue on the effectiveness of remedies. The goal is to thoroughly examine the available remedies pursuant to s.24 and s.52 of the *Charter* as well as remedies for the violation of Aboriginal and treaty rights under the constitution. Key themes include:

- Will the promise of the *Ward* Charter damage claim be realized? Issues related to the quantum of damages in relation to the costs and risks of litigation; the interaction between *Charter* and tort claims and the role of *Charter* damages and class actions.
- The role of injunctions and declarations: Would/should the Supreme Court affirm supervisory jurisdiction as it did in *Doucet Boudreau* if it heard the case today; are injunctions necessary or will declarations suffice including in litigation with respect to conditions of confinement and positive rights? What can be learned from comparative experiences?
- Remedies for violations of Aboriginal and treaty rights: What are the remedies for breach of the duty to consult and are they meaningful and effective?
- Remedies for unconstitutional legislation: Are the courts employing the soft remedies of reading down and suspended declarations of invalidity too much?
- Other conference themes may include issues such as the evidence necessary to justify a particular remedy; remedies in the criminal law context; the remedial role of costs awards; interlocutory injunctions in the constitutional context; and jurisdiction to award *Charter* remedies.

The papers will be utilized as the central themes on various panels across the one day conference and selected conference papers will be considered for publication as part of a special issue of the *National Journal of Constitutional Law*. Authors of papers chosen for presentation will be notified by October 31, 2013. Final (for the conference) papers are due by January 31, 2014.

For those interested in participating, please send an abstract (max: 250 words) of your intended paper with a 1-2 paragraph biography to: Cheryl Milne at cheryl.milne@utoronto.ca by **September 30, 2013**.

Asper Centre Interventions

Tanudjaja et al. v. Attorney General (Canada) and Attorney General (Ontario)

On May 27-29 2013, Professor Kent Roach represented the Asper Centre at the Ontario Superior Court of Justice on the motion to strike the pleadings in this application. This application asks the Court to declare that ss. 7 and 15 of the Charter have been infringed by the failure of the Ontario and Federal governments to develop comprehensive strategies to address homelessness. The Asper Centre intervened to address the governments' claims that the remedies sought were not within the jurisdiction of the court. The applicants sought declarations of constitutional violations, an order that Canada and Ontario must develop a comprehensive plan to deal with homelessness, and retention of supervisory jurisdiction. The Asper Centre argued that the proposed remedies are within the broad remedial jurisdiction of provincial superior courts and respect the role of the judiciary, the legislature and the executive. The Court's judgment is reserved. Clinic students Laura Spaner and Cliff Anderson worked on the factum for the intervention. The Asper Centre's factum is available on our [website](#).

Canada (Attorney General) v. Bedford

On June 13 2013, our inaugural Constitutional Litigator-in-Residence Joseph Arvay Q.C. represented the Asper Centre at the Supreme Court of Canada in the appeal of the constitutional challenge to several prostitution-related provisions of the Criminal Code. The Asper Centre was the only intervener to intervene on the issue of *stare decisis*, the impact of previously decided cases on the ruling. The Asper Centre argued that the Attorney Generals' assertion that the s. 7 analysis in *Bedford* was precluded by the 1990 Prostitution Reference was incorrect because there is no issue of binding precedent where there are different legal considerations raised. The Asper Centre also argued that there is no *stare decisis* where there is a significant and material change in the social and legislative facts underpinning the constitutional challenge. Clinic students Marcus McCann and Clara Morrissey helped to prepare the materials for the intervention. The Court's judgment is reserved. The Asper Centre's factum is available on our [website](#), and the webcast of the hearing is available on the Supreme Court's [website](#).

R. v. Kokopenace

The Ontario Court of Appeal released its decision in the *Kokopenace* appeal on June 14, 2013. The appellant argued that the jury pools from which the juries were selected were unrepresentative because the government failed to include a large number of potential jurors who were First Nations living on-reserve. While the Court of Appeal declined to address the equality rights argument put forth by the Asper Centre, the Court granted the appeal and ordered a new trial. The Asper Centre's factum and the judgment are available on our [website](#).

Website Updates

We are constantly adding materials to our collection of Supreme Court facta on our [website](#). Materials are now available for the following cases:

- *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14.
- *Quebec (Attorney General) v. A*, 2013 SCC 5.
- *R. v. Aucoin*, 2012 SCC 66.
 - *R. v. Cole*, 2012 SCC 53, [2012] 3 S.C.R. 34.
- *R. v. Levkovic*, 2013 SCC 25.
- *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11.

Save the date! November 8, 2013

David Asper Centre Fifth Anniversary Symposium, discussing the impact of the ground-breaking Charter litigation we have contributed to.

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>

To remove your name from our mailing list, please click [here](#).

Questions or comments? E-mail us at aspercentre@utoronto.ca