On April 26th of the year, Prof. Audrey Macklin made submis- sions on behalf of the Asper Centre before the House of Com- mons Justice Committee. The Committee was considering Bill C-11, Protecting Cana- dian Immigration System Act, a sweeping package 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 O- go Kode Hall Law School and lawyer Barbara Jastrzebski. For more details, click here to see a longer summary of Prof. Macklin's submissions prepared by the Asper Centre's sum- mary research assistant, JOMIKA student Louis Century.

Refugee Law Office Conference on Bill C-31

The Protecting Canadian Immigration System Act, which transforms Canada's refugee laws, received Royal Assent on June 26th, 2012. Its provisions will come into force over the next several months; some already have. To make sense of this new environment, notably, on July 26th, Refugee Law Office led by Margot Chaban took students from across On- tario to the Asper Centre in Toronto. 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 is the time to prepare for them. Each speaker, attended half-an-hour or so, touched on a different aspect of the legislation. How will the new law affect appealed work? What is the significance of Minimalist designation based on means of entry? What are the new gaps in permanent residence law? How will applicants, refugee claimants, and their lawyers navigate the dramatically expanded timelines and uncertainty both in unprecedented claims affect the practice of refugee law?

In the closing session, a panel of eight leading refugee lawyers discussed strat- egy around constitutional challenges. Several highlighted the need for open communication and cooperation among counsel, with the Canadian Association of Immigration Lawyers, other migrant rights organizations, and the court, and most seemed to support this message: the goal is to improve the law for all, and a jointly 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 hermeneutic realism: it’s useless to claim the former is too liberal and then claim the Constitution is misunderstood when the Constitution is misunderstood.

Center v Canada (Attorney General), 2012 BCCA 886

On June 15th, 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 equality. The court also found that the laws deprive the physically disabled and those who try to help them of equality.

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’s request for doctor-assisted suicide, rejecting her claim that the laws were violated.

In January, Joseph Arvay, the Asper Centre’s inaugural Constitutional Litigator-in-Residence, asked center 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 their or others lives in a “humane and dignified manner.” In the April 2012 edition of the Asper Newsletter, we asked Arvay how he interpreted the victory.

Arvay said that not only does have three new principles of fundamental justice – overbroadness, gross disproportionality, and the principle of equality – emerged since Rodriguez, Center, and most constitutional cases coming before the courts today, have a much higher fidelity. Arvay discussed the constitutional issues raised 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.

Recent Constitutional Cases – Appellate

Center for Addiction and Mental Health v. Ontario, 2012 DICA 12. An issue in this appeal was the constitutionality of the Criminal Code, which allows for a stand- in order to make that requires an accused to submit involuntarily to anti- psychotic drug therapy following a finding that the accused is unfit to stand trial. The process is known as a Criminal Code section 718.1. Macklin’s submissions prepared by the Asper Centre before the House of Commons are available here. Macklin’s submissions prepared by the Asper Centre before the House of Commons are available here.

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

On November 8th and 9th, 2012, the Asper Centre will be holding a conference on Charter litigation and the use of social science evidence. The goal is to foster a debate on the role of social science evidence in Charter litigation by creating opportunities for dialogue between social scientists, academics, students, and lawyers. 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.
- Evaluating the authenticity of expert evidence: jurisdictional perspectives.
- The tensions between the disciplines of social science and law as they arise in the context of litigation.
- The persuasive value of social science evidence: its limits, and its admis- sibility. 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 practical approaches to hearing and analyzing social science evidence. In particular, the conference is designed to stimulate a dialogue that highlights the approaches to various disciplines in the use of social science evidence in order to develop an inter-disciplinary under- standing and collaboration.

For more information about the conference, please go to www.aspercentre.ca/constitutional-caseappellate.html

Upcoming Events

Fall Newsletter

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

Fall Newsletter

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