



David Asper Centre for Constitutional Rights UNIVERSITY OF TORONTO

2018-2019 ANNUAL REPORT



Realizing Constitutional Rights through Advocacy, Education and Academic Research

78 Queen's Park Crescent, Toronto, Ontario, M5S 2C35
(416) 978-0092 • www.aspercentre.ca

TABLE OF CONTENTS

About the Asper Centre	1
Message from the Executive Director	2
Advocacy and Litigation	3
10th Anniversary Celebration	4
Immigration Detention Symposium	5
Panels and Lectures	6
Constitutional Roundtables	6
Constitutional Litigator-in-Residence	7
Clinical Legal Education	8
Student Working Groups	9
Wilson Moot	10
Student Volunteers	10
Research and Writing	11
Police Accountability Project	11
Financial Contributions	12
Pro Bono Contributions	12
Advisory Group	13
Asper Centre Staff	14
Accolades	15

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.

Through the establishment of the Centre the University of Toronto joins a small group of international law schools that play an active role in constitutional debates of the day. It is the only Canadian Centre in existence that attempts to bring constitutional law research, policy, advocacy and teaching together under one roof. The Centre was established through a generous gift from University of Toronto Faculty of 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.

MESSAGE FROM THE EXECUTIVE DIRECTOR

This past year we celebrated the 10th anniversary of the Asper Centre. Our accomplishments in 10 years have been significant with over 20 interventions at the Supreme Court of Canada. We are also grateful for the additional support of \$2.5 million toward the Centre's endowment over the next 5 years from David Asper. This additional support will increase the capacity of the Centre to continue to be a leader in constitutional law in Canada.

Over 60 students have become alumni of the clinic program. We continue to reach out to these graduates to engage them to act as our counsel in our cases in order to mentor, not just current students, but the young lawyers that have continued their interest in litigation and constitutional rights. We were recently granted intervener standing in a case before the Ontario Court of Appeal involving equality rights in sentencing, and our lead counsel, Nader Hasan will be accompanied by former Asper Clinic student, now lawyer, Geetha Philipupillai of Goldblatt Partners LLP.

We also received funding this past year from the Law Foundation of Ontario for our police accountability project that began as a summer fellowship, then continued as a volunteer student working group. While the law remains somewhat uncertain at the moment, we intend to complete online guides for the public on police complaints in the province of Ontario once the new legislation comes into force.

Other litigation of note this past year included our intervention in the City of Toronto appeal on the issue of freedom of expression during an election. While the majority of the Court held that the right had not been infringed by the change mid-election to the electoral boundaries in the City of Toronto, the dissent quoted directly from our legal arguments. Students who had been part of Prof. Lorraine Weinrib's constitutional litigation course worked extensively on the legal research that went in to our factum. Leave is being sought at the Supreme Court of Canada; so, we hope to take this case to the next level.

As always I am excited by the work of the Centre and feel privileged to work with our incredible students, faculty and staff.



A handwritten signature in dark ink, which appears to read 'Cheryl Milne'.

Cheryl Milne, LL.B, MSW
Executive Director



ADVOCACY AND LITIGATION

Bradley David Barton v. Her Majesty the Queen (2018)

The Appellant, Mr. Barton was charged with the first degree murder of Cindy Gladue. The Crown argued that Mr. Barton intentionally caused a fatal injury, alternatively, he was guilty of manslaughter for causing death in the course of a sexual assault. Mr. Barton testified to consensual sexual activity and accidental injury. A jury acquitted Mr. Barton of first degree murder and of manslaughter. The Alberta Court of Appeal allowed an appeal and ordered a new trial. In its decision to overturn Barton's acquittal, the Court of Appeal drew extensively from an intervenor factum submitted jointly by LEAF and IAAW. Barton objected to the weight that ABCA gave to the joint-interveners' submissions. The Asper Centre intervened in this matter at the Supreme Court to comment on the role of interveners in public interest litigation.

City of Toronto v. Attorney General of Ontario et al (2019)

On Sept 10, 2018, Ontario Superior Court declared that the province had "substantially interfered" with the Charter S.2(b) freedom of expression rights of both the municipal ward election candidates and City of Toronto voters and struck down the province's Bill 5 (which reduced the number of City of Toronto wards from 47 to 25) as unconstitutional. The province appealed the decision to the Court of Appeal, which on Sept 19, 2018 stayed the order of the Superior Court pending the appeal, and thus allowed the election to proceed with the reduced number of wards. The Asper Centre intervened at the appeal, setting out a broad purposive view of freedom of expression in the election context.

Conseil scolaire francophone de la Colombie-Britannique v. British Columbia

Section 23 of the Charter guarantees the right to minority language education. In British Columbia, the Conseil scolaire francophone de la Colombie-Britannique (B.C.'s French language school board) and co-plaintiff parents brought a lawsuit against the Ministry of Education to obtain the financing required in order to build schools that are equivalent to English-language schools. The trial judge said the province breached the French-speaking community's rights under section 23 of the Charter in several areas of B.C. The Court of Appeal said courts needed to be practical when looking at section 23. Giving the school board what it wanted would cost too much and section 23 of the Charter didn't mean the province had to provide all the school facilities right away. The school board appealed. The Asper Centre was granted intervenor standing on the issue of the remedy awarded by the trial court for the breach of s.23 and whether the *Ward* principles should apply.

Her Majesty the Queen v Cheyenne Sharma (2019)

The Appellant, Ms. Sharma is a bi-racial Indigenous woman, whose ex-boyfriend used her as a drug mule and she was charged and convicted with importing just under 2kgs of cocaine. She would have been a suitable candidate for a conditional sentence but for the prohibition preventing drug importers from receiving a conditional sentence. In response to Ms. Sharma's s.15 Charter argument that s.742.1(c) of the *Criminal Code* is unconstitutional as it disproportionately affects Indigenous women by removing the ability to serve their sentences as conditional sentences, the judge held that there is no reason to believe that the prohibition, on the record before it, created an adverse effect such that it can qualify as a distinction based on Aboriginal status. The Asper Centre jointly intervened in this appeal with the Women's Legal Education and Action Fund (LEAF). This appeal will be argued on November 20, 2019.

10th ANNIVERSARY CELEBRATION

On **October 17th, 2018** the University of Toronto Faculty Of Law opened its doors in celebration of the Asper Centre's 10th Anniversary.

The event featured a conversation between Mary Eberts and Joseph Arvay, two of the Asper Centre's former Constitutional Litigators in Residence, moderated by former Supreme Court of Canada Justice Thomas Cromwell. Eberts has acted as counsel to parties and interveners at all levels of court and was one of the founders of the Women's Legal Education and Action Fund (LEAF). Since 1991, Eberts has been litigation counsel to the Native Women's Association of Canada (NWAC). Arvay, the

first Constitutional Litigator-in-Residence for the Asper Centre, is recognized as one of Canada's foremost constitutional litigators. Together, Arvay and Eberts have appeared before the Supreme Court in more than fifty constitutional appeals and both were made Officers of the Order of Canada in 2018.

The Asper Centre's 10th Anniversary celebration was an engaging and informative event. Mirroring the Asper Centre's mandate, the questions posed to its esteemed guests from Justice Cromwell were oriented around topical issues in constitutional law and access to constitutional rights.

Eberts and Arvay shared their views on early Charter jurisprudence as well as the development of the s. 15(1) equality guarantee. By now it is clear that the Supreme Court's interpretation of s. 15(1) has been inconsistent. However, both Eberts and Arvay agreed that it has now stabilized. Importantly, Eberts would welcome greater judicial consideration for the meaning of "equal protection and equal benefit of the law" within the equality guarantee.

Eberts and Arvay were asked to express their views on the development of Aboriginal law and Indigenous rights. Notwithstanding the progress made through cases like *Delgamuukw v British Columbia* and *Tsilhqot'in Nation v British Columbia*, the Asper Centre's distinguished speakers agreed that there is more to be done. For instance, Eberts suggested that s. 35 of the Constitution Act, 1982 has been thus far, interpreted too narrowly. Moreover, greater regard must be had for the role of "the emerging Indigenous nations in Canadian federalism". From the perspective of counsel for Indigenous litigants, Arvay articulated the difficult task of seeking relief from Canadian courts while limiting the room for those same courts to make pronouncements on Indigenous law.

On the role of interveners in constitutional litigation, both Eberts and Arvay agreed that they play an integral role to constitutional litigation, namely, ensuring that all interests/perspectives relevant to an issue are fairly represented. Unfortunately, the Supreme Court's continued shift toward minimizing the time given for interveners to make oral submissions tempers their efficacy and utility. The Asper Centre, as a frequent intervener in the Supreme Court has equally been impacted by these temporal limitations.

The Asper Centre's founder, David Asper attended the anniversary event and it was announced that evening that Mr. Asper donated \$2.5 million, as part of the faculty's Campaign for Excellence without Barriers, to fund the David Asper Bursary, and to guarantee the future of the one-of-a-kind Asper Centre, the only constitutional advocacy and research centre with experiential learning for students at a law school. This gift was in addition to the \$7.5 million that Asper donated in 2007, then the largest individual gift to the Faculty of Law, which kick-started the building campaign and launched the Asper Centre in 2008.



From L to R, Dean Ed Iacobucci, Cheryl Milne, Joseph Arvay (sitting), David Asper, Mary Eberts, and Thomas Cromwell (photo by D. Chang)



IMMIGRATION DETENTION SYMPOSIUM

On **March 15th 2019**, the Asper Centre convened a one-day Immigration Detention Symposium focused on advancing litigation and advocacy strategies to address the challenges within Canada's immigration detention system. This symposium stemmed from the Asper Centre's 2018 Public Interest Litigation Conference, which included a panel that focused on litigation strategies in immigration detention cases. The Symposium highlighted immigration practitioners' and civil society's current advocacy efforts, recommendations and resources for achieving meaningful solutions to the challenges.

The following panels were included in the Symposium:

Panel I: Immigration Detention External Audit, IRB and Audit Response Report: Recommendations & Next Steps

This panel addressed the Immigration and Refugee Board's (IRB) External Audit report of 2018, the IRB's response to the External Audit report, as well as the response to the External Audit from members of the immigration bar, researchers, advocates and civil society members, with a view to facilitating a discussion identifying the areas, arguments and cases for possible further litigation and advocacy.

Panelists: Aviva Basman (Assistant Deputy Chairperson of the Immigration Division, Immigration and Refugee Board), Kathy Laird (Toronto lawyer, IRB External Audit Immigration Detention author), Hanna Gros (International Human Rights Program, UTLaw), Sarah Boyd (Jackman & Associates), with David Cote (Immigration Staff Lawyer, HALCO) moderating.

Panel II: Habeas Corpus Best Practices

While the SCC's decision in *Chhina* provided clarification on the scope of the writ of habeas corpus, this panel focused on practical strategies for filing habeas corpus claims for immigration detainees. Access and procedure tips, arguments for challenging the lawfulness and reasonableness of a continued deprivation of liberty, arguments in "danger to the public" cases, and how to utilize Section 11 of the Charter were some of the issues discussed.

Panelists: Subodh Bharati (Barrister & Solicitor/Review Counsel, Osgoode CLASP), Jared Will (Jared Will & Associates), Swathi Sekhar (Immigration & Refugee Lawyer), with Simon Wallace (Refugee Law Office) moderating

Panel III: CARL Toolkit and a Compendium of Relevant Case-Law for Immigration Detention Practitioners

The Canadian Association of Refugee Lawyers (CARL) developed an Immigration Detention Toolkit to help familiarize counsel with the main findings of the IRB's External Audit and provide tips, steps and suggestions on how counsel can ensure the fairest process possible for our clients. The Toolkit, presented in this panel, advises how to, among other things: (a) prepare for a detention review, (b) develop and present alternatives to detention, (c) present and test oral or other kinds of evidence, (d) respond to multiple detention reviews; and, (e) follow up post-hearing. As well, the Toolkit provides tips on how to work with detainees with mental health issues, addictions and other vulnerabilities.

The IRB's External Audit confirmed that in many of the Immigration Division's hearings and decisions, "...there were notable discrepancies between the expectations articulated by the courts and the practice of the Immigration Division." Two Asper Centre Clinic students created a summary of the relevant case law in which the courts articulate what a legally sound and fair immigration hearing should look like. This Compendium of cases, which serves to complement the CARL Toolkit, was also presented at this panel.

Panelists: Jamie Chai Yun Liew (uOttawa Law Associate Professor, co-leader of CARL working group on Immigration Detention), Aris Daghighian (Green and Spiegel, member of CARL's Working Group on Immigration Detention), Jim Molos (JD Candidate UTLaw and Asper Centre Clinic student), with Enbal Singer (Asper Centre Immigration & Refugee Law Student working group co-leader) moderating.



PANELS & LECTURES

Above the Law? The proposed Better Local Government Act constitutional challenge and Premier Ford's use of the Notwithstanding Clause *September 20, 2018*

Following the court ruling that Premier Doug Ford's Bill 5 – the so-called *Better Local Government Act* – to reduce Toronto's city council from 47 wards to 25, was unconstitutional because it breached s. 2(b) of the Charter, Premier Ford announced that not only was his government going to appeal the court's decision, but he was going to invoke the Constitution's "notwithstanding clause" for the first time in Ontario's history. The Asper Centre convened a panel discussion to unpack the legal issues involved in this unprecedented case. Panel members included two of our faculty's Constitutional Law Professors **Lorraine Weinrib** and **Yasmin Dawood**, and litigator **Steven Barrett** of Goldblatt Partners LLP.

Your Right to Know: An Access to Information Panel *September 26, 2018*

Access to information from our government underpins society's most important democratic ideals, including government accountability, freedom of expression and press freedom. This panel focused on the importance and uses of Access to Information (ATI) and Freedom of Information (FOI) requests, best practices for filing ATI requests, and limitations/challenges with the ATI regime in Canada. The panelists included **Dara Lambie**, Legal Counsel for the Office of the Information and Privacy Commissioner Ontario; **Alex Luscombe**, PhD student in the Centre for Criminology and Sociolegal Studies at the University of Toronto, who works to advance the use of FOI requests as a method of data production in the social sciences; and, **Michael Power**, Toronto Lawyer and author of *Halsbury's Laws of Canada, Access to Information*.

Indigenous Family Law: The case of Beaver v Hill *March 21, 2019*

The Asper Centre Indigenous Rights student working group convened a panel discussion about the Indigenous family law dispute between Brittany Beaver and Ken Hill, who are Haudenosaunee parents to a boy. Mr. Hill argues that Haudenosaunee, not Ontario law, should guide his spousal and child support payments. Three constitutional and family law practitioners discussed the issues in the case, including which families' Indigenous legal systems should apply, and whether Indigenous self-governance can be an individual right or only a collective one. The panelists were **Scott Byers** (Martha McCarthy & Co.), **Jessica Orkin** (Goldblatt Partners) and **Judith Rae** (Olthuis Kleer Townshend). Professor **Carol Rogerson** moderated.

CONSTITUTIONAL ROUNDTABLES

Interpreting Unwritten Constitutional Norms: Court-Packing in the United States as a Case-Study

January 23, 2019 | Speaker: Professor Mark Tushnet, Harvard Law School

Professor Tushnet examined the U.S. constitutional convention against court-packing and whether it undermines judicial legitimacy. University of Toronto Faculty of Law Professor Yasmin Dawood, as discussant, provided commentary on Professor Tushnet's presentation.

Canadian Justice, Indigenous Injustice: The Gerald Stanley/Colton Boushie Case

February 5, 2019 | Speaker: Professor Kent Roach, University of Toronto Faculty of Law

Professor Roach examined Gerald Stanley's trial for the killing of Colton Boushie, a 22 year old Cree man, in its broader historical, political and legal context with attention to the role of equality rights in jury selection and trial procedures.

Toward a Substantive Understanding of Citizenship in the Canadian Charter of Rights and Freedoms

February 28, 2019 | Speaker: Assistant Professor Y.Y. Chen, University of Ottawa Law

Professor Chen presented about how "citizens" should be interpreted in the Charter context and whether "immigration status" should be considered a protected ground under s. 15 of the Charter.



SUSAN URSEL: Constitutional Litigator-in-Residence



Susan Ursel was the Asper Centre's Constitutional Litigator-in-Residence for the fall 2018.

Ursel, a Toronto-based employment and human rights lawyer, taught constitutional advocacy in the Asper Centre clinic during the fall term. Drawing upon her extensive experience from her constitutional, human rights and administrative law practice, she mentored students on the case files that they worked on in the clinic.

“Susan Ursel’s wealth of litigation experience and work in the human rights field, especially in seeking equality rights, added an exciting dimension to the clinic this term,” says executive director Cheryl Milne. Susan Ursel re-

ceived her Bachelor of Laws from Osgoode Hall Law School in 1984. She received an award in civil litigation during the Bar Admission course, and was called to the Bar in 1986. She currently works as a senior partner with the Toronto law firm of Ursel Phillips Fellows Hopkinson LLP, and serves as Chair of the Canadian component of the African Legal Research Team which provides legal research support to the multi-disciplinary project Envisioning Global LGBT Rights.

An experienced litigator, Ms. Ursel’s work includes both arbitration/trial level work, and appellate advocacy. She practices in the areas of labour, employment, pay equity, employment equity, human rights, pensions, and benefits law. She has practiced at all court levels, including the Supreme Court of Canada, as well as extensively before labour boards, human rights tribunals, and arbitration boards.

Ms. Ursel is a member of the Ontario Bar Association, the Canadian Association of Labour Lawyers, and the Association of Human Rights Lawyers. She has also been a founding member or director of various groups and organizations, including the Coalition for the Reform of the Ontario Human Rights Commission, the Association of Human Rights Lawyers, the Foundation for Equal Families, the Feminist Legal Analysis Committee, the Gay and Lesbian Issues and Rights Committee of the Canadian Bar Association: Ontario (now the SOGIC of the Ontario Bar Association), and Pro Bono Law Ontario.

Ms. Ursel has received the Lifetime Achievement Award from Pro Bono Ontario in 2016, the Canadian Bar Association’s Young Lawyer’s Pro Bono Service Award in 1998, and the Canadian Bar Association’s Sexual Orientation and Gender Identity Conference Hero Award in 2011.

Of this opportunity, Ms Ursel commented: “Constitutional issues and litigation have been a passion of mine for many years and I am honoured to be doing this work with the Asper Centre which is renowned for its constitutional expertise and for its exceptional educational programs. My thanks to the Centre for inviting me to work with them.”

This year Ms. Ursel joined Executive Director Cheryl Milne in being a recipient of the Law Society Medal bestowed by the Law Society of Ontario for excellence in the profession.

Clinic Students: Devon Johnson, Juella Xhaferaj, Jim Molos, Ioana Dragalin, Sarah Kanko, Cecile McKenzie, Leslie St. Amour, Sahil Kesar

Clinic Projects

Sex Education Curriculum Charter Challenge

Under the guidance of the Asper Centre's 2018 Constitutional Litigator-in-Residence, Susan Ursel, Clinic students provided assistance to a group of prospective interveners in the Constitutional challenge to the Ford government's repeal of the 2015 sex-ed curriculum. The students conducted research on several topics including Constitutional conventions and Charter jurisprudence focused on sections 7 and 15 of the Charter.

Free Speech on University Campus

In August of 2018, the Ontario government announced, via a news release, that it was going to require universities to develop, publicly post and enforce free speech policies on their campuses and apply current disciplinary methods to students in violation of the free speech policy. With the assistance of Professor Richard Moon, Clinic students researched and drafted a report on the possible Charter implications of the Ontario government's free speech on campus directive.

Response to Immigration and Refugee Board's 2018 External Audit (Immigration Detention)

In 2018, the Immigration and Refugee Board released an External Audit report on the immigration detention system in Canada as well as its own Management Report and Action Plan in response to the External Audit's scathing criticisms. Clinic students contributed research to a draft joint-civil society/immigration bar practitioners' report in response to these two documents. The Clinic students who worked on this project continued with a practicum in the winter term, in which they developed a compendium of relevant Canadian case law in which the courts have articulated what a legally sound and fair immigration detention hearing should look like.

Clinic Guest Speakers

Hon. Justice Kathryn Feldman, Cara Zwibel, Zachary Green, Paul Schabas, Sean Fine, Jessica Orkin, Kim Stanton

Pro Bono Assistance

Professor Richard Moon, David Cote (HALCO) and Susan Ursel

"This course reoriented my perspective from mere law student to also future lawyer."

—Asper Centre Clinic Student

STUDENT WORKING GROUPS

University of Toronto law students become involved in the Asper Centre's work through volunteering with one of our student working groups. The working groups are student-led initiatives that bring together students to work in conjunction with academics, civil society groups or members of the bar on Charter rights advocacy or current constitutional law issues. In 2018/2019, the Asper Centre had three dedicated student working groups, who were involved in a number of ongoing research and advocacy projects.

Indigenous Rights Working Group (Student leaders Zachary Biech, Eileen Church Carson, Sara Tatelman, Janice To, Veronica Guido, Bridget McInnis): This working group focused on the constitutional dimension of Indigenous rights. The group analyzed the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") and Bill C-262 (An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples) from a Constitutional lens. The group also researched whether it was possible to draft legislation to exonerate Indigenous peoples convicted for practicing their ceremonies under past legal regimes. Lastly, the group examined the Indigenous family law case of *Beaver v Hill* and convened a panel for the law school community to unpack the issues in the case.

Immigration and Refugee Law Working Group (Student leaders Karen Chen, Nicole Morin, Enbal Singer): This working group provided research support for the legal team representing the public interest litigants (Canadian Council for Refugees, Amnesty International and the Canadian Council of Churches) who are challenging the constitutionality of the U.S./Canada Safe Third Country Agreement in the Federal Court. The working group also drafted various blog posts for the Asper Centre Blog and wrote an opinion piece published on Refugee Rights Day urging the government of Canada to live up to its responsibilities to protect refugees by suspending the Safe Third Country Agreement.

Police Oversight Working Group (Student leaders Brittany Cohen, Joshua Favel, Natalie Day, Ava Armand): This working group continued (from the previous year) to work on the public legal information guide to navigating Ontario's police oversight system. The guide will include information on the structure, important timelines, helpful strategies, and realistic expectations of success for victims of police misconduct or other persons who have legitimate police complaints. Additionally, this group investigated and researched the status of the previous provincial government's Ontario Safer Act (Bill 175), which was expected to come into force in 2019, but never did.

STUDENT RESEARCH ASSISTANTS

Jasmit de Saffel, Work Study Student 2018-19—Jasmit provided support through the work-study program from September 2018 to February 2019. She prepared case summaries, blog posts and updates for our website.

Keely Kinley, Research Assistant Summer 2019—Keely was the summer research assistant for the Asper Centre conducting legal research, website updates, drafting for litigation files and general support for the work of the Centre.

Paniz Khosroshahy, Fellowship Summer 2019 —Paniz worked as an Asper Centre fellow at the Women's Legal Education and Action Fund (LEAF).



Paniz Khosroshahy at LEAF

The Wilson Moot 2019 took place on February 22 and 23, 2019 at the Federal Court facilities in downtown Toronto.

Students Mariangela Asturi, Eileen Church Carson, Su Rao, and Sonia Patel represented the University of Toronto Faculty of Law at the moot, arguing a problem that focused on a Charter claim of discrimination in the government funding of a program for assisted human reproduction in Saskatchewan.

The students were supported by Joseph Cheng (MAG), Cheryl Milne (Asper Centre) and Professor Lorraine Weinrib, as well as student coaches Meena Sundararaj, Julia Kirby, Ritika Rai and Hayley Goldfarb.



The Wilson Moot team, 2019: Mariangela Asturi, Eileen Church Carson, Su Rao and Sonia Patel

STUDENT VOLUNTEERS

We greatly appreciate the work of our student volunteers throughout the academic year. In addition to the student working group leaders, the following students participated in our student working groups in 2018-2019.

Adrian Ling
Alex Smith
Anju Xing
Anne Lee
Anton Lunyov
Arjun Gandhi
Ashley Qian
Catie Seeley
Claudia Shek
Conlin Delbaere-Sawchuk
Cristin Hunt
Daniel Gao
Daniel Yang
Delia Luca
Ernest Tam
Gergana Angelova
Hannah Goddard-Rebstein
Him Ranjit
J.P. Gonsalves

Jacob Webster
James Dunn
Jeffrey Wang
Jenna Kara
Katelyn Johnstone
Katerina Ignatova
Katie Kim
Keeley Kinley
Labiba Chowdhury
Lama El-Hanan
Liam Turnbull
Lilly Gates
Mackenzie Claggett
Madeline Stewart
Maryam Samani
Mashoka Maimona
Meg Cormack
Michelle Huang
Michelle Lafortune

Novalee Davy
Olivia Eng
Olivia Martin
Paniz Khosroshahy
Patrick Pinno
Rachael Girolametto-Prosen
Raoof Zamanifar
Renuka Koilpillai
Ryan Deshpande
Samantha Nault
Scott Wodhams
Shelby Rooney
Sophie Barnett
Tabir Malik
Timon Li
Tresa Zacharia
Vernon Lin
Vidya Prakash

RESEARCH AND WRITING

Public Interest Litigation in Canada (Lexis Nexis: 2019)

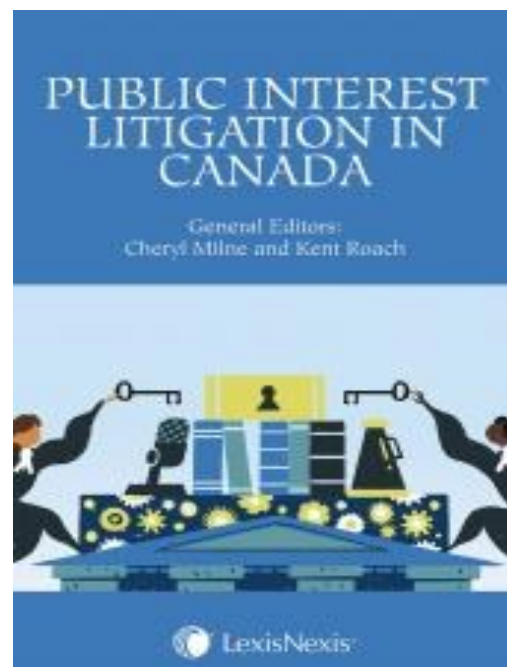
In April 2019, a soft-cover volume including the long papers and the shorter case comments from our 2018 Public Interest Litigation Conference was published by Lexis Nexis. The publication is titled *Public Interest Litigation in Canada*, and Asper Centre Executive Director Cheryl Milne and University of Toronto Faculty of Law Professor Kent Roach were the general editors.

The book presents an overview of theories and strategies for public interest litigation and the various avenues and methodologies that have been used in Canadian history. It also examines its development since the introduction of the *Charter*, challenges and successes, procedural issues, the role of interveners and its social impact. The volume is broken down into four parts, with each part comprising long analytical essays and a few case comments. The four parts of the book are: 1) Overarching Themes and Strategies in Public Interest Litigation in Canada; 2) Procedural and Technical Issues; 3) Interventions; and 4) Case Studies.

Asper Centre Blog

We continue to maintain a well-read blog on current issues in constitutional law, summaries of Asper Centre and other relevant events, and student reflection pieces.

Students have been the main contributors including our summer and work study research students. See the latest posts at www.aspercentre.ca.



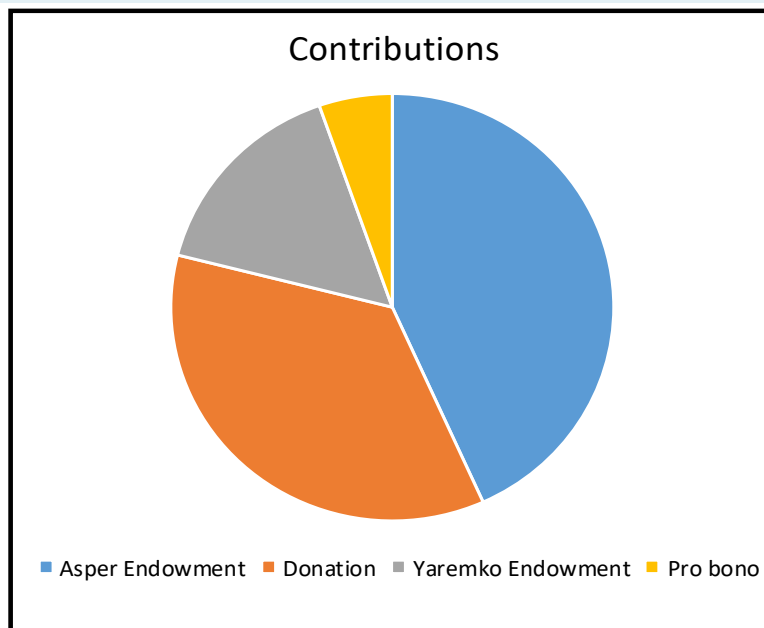
POLICE ACCOUNTABILITY PROJECT

The Asper Centre was awarded a Law Foundation of Ontario (LFO) responsive grant to develop online guides to the police oversight procedures in Ontario. The funds have thus far assisted us to undertake consultations with relevant stakeholders and communities, to inform the development of the guides as well as our dissemination plan for the guides. The grant will also support the translation of the guides into French, and into a number of Indigenous languages, as well as the design of the accessible PDF guides and the development and maintenance of a web-platform that will house the guides.



We are very grateful for the LFO grant, as this project is very timely and important given the current context of police oversight legislative reforms in Ontario; recent media exposure of issues behind unfounded sexual assault allegations; and, the serious concerns being raised in respect of the treatment of women and girls from First Nations, Metis and Inuit communities as well as the police mishandling of complaints by Indigenous peoples. We are also grateful for the support of LEAF (Women's Legal Education and Action Fund) and Aboriginal Legal Services as our project partners. Due to delays in the implementation of the recently overhauled police services legislation in Ontario, the end-date of this project will likely be in late 2020.

FINANCIAL CONTRIBUTIONS



We are grateful for David Asper's further \$2.5 million donation to the Asper Centre's endowment over the next 5 years.

PRO BONO CONTRIBUTIONS

Faculty Support

- Lorraine Weinrib, Roslyn Levine, Kent Roach, Yasmin Dawood

Pro Bono Lawyers

- **Prof. Richard Moon** (Windsor Law)
- **Susan Ursel**, Ursel Phillips Fellows Hopkinson LLP
- **David Cote** of HALCO
- **Nader Hassan**, of Stockwoods LLP and **Geetha Philipupillai** of Goldblatt Partners, our counsel in *Morris* intervention
- **Jessica Orkin** and **Adriel Weaver** of Goldblatt Partners, our counsel in *Sharma* intervention
- **Alexi Wood** and **Jennifer Saville** of St. Lawrence Barristers, our counsel in *City of Toronto* intervention
- **Norton Rose Fulbright** continues as our Ottawa agent on Supreme Court of Canada matters.

ST. LAWRENCE
BARRISTERS LLP

GP GOLDBLATT
PARTNERS



STOCKWOODS
barristers

NORTON ROSE FULBRIGHT



David Asper Centre for Constitutional Rights
UNIVERSITY OF TORONTO

ADVISORY GROUP



Professor Kent Roach is the chair of the Advisory group. He 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. He is the author of 12 books, the co-editor of several collections of essays and published casebooks, the author of the Criminal Law and Charter volumes in Irwin Law's essentials of Canadian law series, and has published over 200 articles and chapters. He served as counsel in several important *Charter* cases, recently appearing at the Supreme Court in the landmark case, *City of Vancouver v Ward*. He represented the Asper Centre in *Downtown Eastside Sex Workers*, *Kokopenace & Spears* appeals, and *Tanudjaja et al*.



Professor Lorraine Weinrib is appointed at the Faculty of Law and the Department of Political Science. 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). Her current work focusses on the legitimacy of the post-WWII model of judicially enforced rights-protection, of which Canada's Charter is both an example and a model for other countries' constitutional development. 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 Associate 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. 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.



Professor Anna Su is an Assistant Professor at the Faculty of Law. Her primary areas of research include the law and history of international human rights law, U.S. constitutional law (First Amendment), and law and religion. Anna holds an SJD from Harvard Law School where her dissertation was awarded the John Laylin Prize for best paper in international law. She received her JD and AB degrees from the Ateneo de Manila University in the Philippines. Prior to coming to Toronto, she held a postdoctoral fellowship at the Baldy Center for Law and Social Policy based in SUNY Buffalo Law School, and a graduate fellowship in ethics with the Edmond J. Safra Center for Ethics at Harvard University. She worked as a law clerk for the Philippine Supreme Court and was a consultant to the Philippine government negotiating panel with the Moro Islamic Liberation Front.



Professor Richard Stacey has a PhD from New York University's Institute for Law and Society and degrees in political theory and law from the University of the Witwatersrand in Johannesburg, South Africa. He served as law clerk to Justice Kate O'Regan and Justice Bess Nkabinde at the Constitutional Court of South Africa, has taught courses in constitutional law, constitutional design, administrative law, political theory and human rights at NYU, the City University of New York Law School, the University of Witwatersrand and the University of Cape Town, and was involved in an advisory capacity in constitutional transitions in Kenya (2009), Tunisia (2012-14), Egypt (2013) and Libya (2013). Before joining the Faculty in 2014, Richard was the Director of Research at the Center for Constitutional Transitions at NYU Law.



Nader Hassan joined the Asper Centre advisory group in 2018. Nader practises criminal, regulatory and constitutional law at the trial and appellate levels. He has an expertise in digital privacy law and search and seizure, and has appeared in many of the leading cases in this area. Nader is a veteran Adjunct Professor of law at the University of Toronto, Faculty of Law, where he has taught the Law of Evidence and currently teaches a popular class on crime and punishment. He frequently lectures on criminal law and civil liberties issues and is an associate editor of the *Canadian Rights Reporter*. He is a co-author of *Sentencing*, 9th edition (LexisNexis, 2017), a co-author and co-editor of *Digital Privacy: Criminal, Civil and Regulatory Litigation* (LexisNexis, 2018), and author of numerous articles on criminal and constitutional law. Nader is a graduate of Harvard University (B.A.), the University of Cambridge (M.Phil), and the University of Toronto, Faculty of Law (J.D.). Upon graduation from law school, Nader clerked for the Honourable Marshall Rothstein of the Supreme Court of Canada.

ASPER CENTRE STAFF



Cheryl Milne was called to the Ontario Bar in 1987 and completed an MSW at the University of Toronto in 1991. Prior to coming to the Centre, Ms Milne was a legal advocate for children with the legal clinic Justice for Children and Youth. There she led the clinic's Charter litigation including the challenge to the corporal punishment defence in the Criminal Code [*Canadian Foundation for Children, Youth and the Law v. Canada* (2004)]. She has represented the Asper Centre in *R. v. Conway*, the Polygamy Reference case and most recently in appeals pertaining to jury vetting and jury representation. She is a Past Chair of the Ontario Bar Association's Constitutional, Civil Liberties and Human Rights section and teaches a clinical course in constitutional advocacy at the University of Toronto, Faculty of Law. Ms Milne is a member of the Steering Committee of the National Association for Women and the Law (NAWL) and the Children's Law Section of the Canadian Bar Association. She was the Chair of the Canadian Coalition for the Rights of Children and Justice for Children and Youth until recently. She served on the Mature Minors Expert Panel for the Medical Assistance in Dying project of the Council of Canadian Academies and is cross-appointed to the Child and Family Services Review Board and the Human Rights Tribunal of Ontario.



Tal is the Asper Centre's Program Coordinator, responsible for the Centre's events, community outreach, advocacy, and overseeing the Asper Centre's student researchers and [student working groups](#). Tal holds a JD from Osgoode Hall Law School and an LLM from the University of Cape Town in South Africa. Prior to the Asper Centre, Tal served as the first Toronto Legal Coordinator for the Refugee Sponsorship Support Program & Lifeline Syria. From 2002 until 2014, Tal worked at the University of Cape Town (UCT) Refugee Rights Unit in South Africa, where she managed its UNHCR-funded refugee legal aid clinic, convened training programs on refugee rights for government officials, police, social workers, and other community members, taught refugee law to law students and led research projects, including co-editing and co-writing South Africa's first textbook on refugee law, titled *Refugee Law in South Africa* (Juta: 2014).



Law Faculty alumnus and former treasurer of the Law Society of Ontario, Paul Schabas, was elected a judge of the Superior Court of Ontario, and a judge ex officio of the Court of Appeal for Ontario. The partner at Blake, Cassels and Graydon LLP received his LLB in 1994 from the Faculty of Law, after studying music and history as an undergraduate, and performing as a professional French horn player. He is an adjunct professor of media law at the University of Toronto, and is a regularly commentator on media and constitutional issues.

Justice Schabas served on the Asper Centre Advisory Group and acted as pro bono counsel in the *B.C. Trial Lawyers Association* appeal at the Supreme Court of Canada.



This past year two of the Asper Centre's former Constitutional Litigators in Residence, Joseph Arvay, Q.C. and Mary Eberts were made officers of the Order of Canada. Mary Eberts is described as a trailblazing lawyer and human rights advocate who has strengthened equality rights of women and girls under the Canadian Charter of Rights and Freedoms through her work with the Canadian Advisory Council on the Status of Women, and as the co-founder of the Women's Legal Education and Action Fund.



Joseph Arvay Q.C., was described as having keen legal acumen and dedication to social justice, playing an unparalleled role in shaping the interpretation of the law on matters of civil rights and liberties. A prolific litigation lawyer, he has appeared before the Supreme Court myriad times and served as counsel in numerous cases of landmark importance, such as physician-assisted suicide, safe injection sites, LGBTQ rights and Indigenous land claims, often on a pro bono basis.



Cheryl Milne, our Executive Director and Susan Ursel, this year's Constitutional Litigator in Residence were among the 2019 recipients of the Law Society of Ontario Medal, which recognizes and lauds "exceptional career achievements and contributions to their communities."

Cheryl Milne's citation says she "has had a profound and unique influence on the Canadian legal landscape as a child rights advocate. She is a leading constitutional and Charter rights litigator, an innovative experiential legal educator, and a generous legal community volunteer. She provided front-line legal services to children and teenagers across a wide range of legal needs for many years

and now leads constitutional advocacy in an academic centre she helped to create."

Susan Ursel is recognized "for her exceptional achievements in labour and employment law and for championing equality rights for the LGBTQ+ communities. Her ground-breaking cases and involvement in LGBTQ+ initiatives have had considerable impact in advancing human rights in Canada and abroad."





UNIVERSITY OF TORONTO
FACULTY OF LAW