



David Asper Centre for Constitutional Rights UNIVERSITY OF TORONTO

2019-2020 ANNUAL REPORT



Realizing Constitutional Rights through Advocacy, Education and Academic Research

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David Asper Centre for Constitutional Rights
UNIVERSITY OF TORONTO

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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.

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. 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

The 2019-2020 academic year ended in a manner that no one could have predicted, with a world pandemic, nation-wide lock-downs and a switch to working completely online. For the Asper Centre, we were fortunate that much of the work of the year had been completed by the time of this massive change. However, the new year has been affected considerably. One of the bright sides was the ability to hire additional student research assistants over the summer to create a robust Asper Centre team. This enabled us to complete the report on the Media Freedom symposium that was held in person, jointly organized with the International Human Rights Program, at the Law Faculty on March 6th. Leading lawyers, journalists and advocates joined in a session led by the students who comprised our Media Freedom Project Team to look at trends in Canada with discussions of how to support media and journalistic freedom.

The Asper Centre was able to continue its influential intervention work this past year. I am particularly proud of our intervention, jointly with LEAF, at the Court of Appeal for Ontario in *R v Sharma*. Argued by our fantastic legal counsel, Adriel Weaver, with Jessica Orkin, of Goldblatt Partners LLP, the appeal was groundbreaking in the way in which the Court analyzed the criminal law issues through an equality lens. At a time when Black and Indigenous Lives Matters has been a rallying cry throughout Canada, spurred on by tragic events in the US and Canada, the majority decision of the Court of Appeal is a hopeful read. We were disappointed to learn that the government is appealing the decision, but plan to be there if it reaches the Supreme Court of Canada.

Much work was done this past year on our Strategic Plan for the next 4-5 years. I am grateful for the contributions made by our community in this process including students, faculty and partner organizations. One key goal of our previous plan that had remained somewhat elusive, was the development of a ground level constitutional challenge, I am proud to say that we have made headway on this long term project and have begun the work of a challenge to the voting age in Canada. All of the students from this past year's clinic course worked diligently on this case, while more will work on it for the next couple of years to come.



Cheryl Milne, LL.B, MSW
Executive Director



ADVOCACY AND LITIGATION

R v. Chouhan (2020)

In September 2019, Parliament abolished peremptory challenges in jury selection (s. 634) and made trial judges the adjudicator of truth in challenges for cause (s. 640). Mr. Chouhan, who was supposed to have his trial in October 2019, argued that the abolition of peremptory challenges breached his ss. 11(d), 11(f) and 7 *Charter* rights. His counsel argued that peremptory challenges allow the accused to remove potentially biased jurors and create a more representative jury. The Court of Appeal dismissed his claims as the legislative changes do not affect his right to a fair trial. The Court also stated that s. 634 should apply *retrospectively*, but s. 640 should apply *prospectively*. The Attorney General of Canada argues on appeal to the Supreme Court that both provisions should apply prospectively, while Mr. Chouhan cross-appealed on the *Charter* claims. The Asper Centre has taken the position that the challenges themselves increase bias in the system and their removal is constitutional.

City of Toronto v. Attorney General of Ontario et al. (2020)

In 2018, Ontario passed the *Better Local Government Act*, 2018, S.O. 2018, c. 11 (“Act”), reducing the size of Toronto City Council from 47 wards to 25 shortly before a municipal election. The Ontario Superior Court declared the *Act* unconstitutional for substantially interfering with the s. 2(b) *Charter* rights of voters and municipal ward election candidates. The Court of Appeal reversed. First, s. 2(b) does not provide absolute protection against government interference of expression; government activity may decrease the effectiveness of expression as a side effect without infringing s. 2(b). While the timing of the ward reduction was problematic, the alleged reduction on freedom of expression was the same regardless of timing. Second, the trial judge incorrectly subsumed the right to vote (s. 3) into s. 2(b). Municipal institutions lack constitutional status and therefore candidates and electors have no s. 3 rights with respect to municipal councils. Finally, s. 92(8) of the *Constitution Act, 1867* grants Ontario the authority to legislate over municipal institutions. The Asper Centre intervened in the case at the Court of Appeal in 2019, and will intervene again at the Supreme Court of Canada. The Asper Centre will advocate for a broad and democratic framework for our expression rights, especially in the context of elections.

Attorney General of Ontario v. G (2020)

This case concerned the rules for suspended declarations of invalidity. G was found not criminally responsible (NCR) on sexual assault charges by reason of mental disorder, and was given an absolute discharge by the Ontario Review Board. However, G was obliged to register and report under the provincial sex offender registry and the federal sex offender registry for life, pursuant to the provincial *Christopher’s Law (Sex Offender Registry)*, 2000, S.O. 2000, c. 1, and the federal *Sex Offender Information Registration Act*, S.C. 2004, c. 10 (“SOIRA”). G argued that Christopher’s Law and SOIRA infringed upon the ss. 7 and 15 *Charter* rights of every person in their position, i.e. every person found NCR and subsequently granted an absolute discharge. The Ontario Court of Appeal found that G’s s. 15 *Charter* rights were unjustifiably infringed, and declared Christopher’s Law and



Jeffrey Wang (2L) with Cheryl Milne

ADVOCACY AND LITIGATION

SOIRA to be of no force or effect in their application to individuals in G's situation. The Court of Appeal suspended the effect of the declaration for 12 months, but exempted G from this suspension. The Attorney General of Ontario appealed the portion of the Court of Appeal's judgment granting an individual exemption from the period of suspension. The Asper Centre recommended flexible rules for the use of suspended declarations of invalidity, as well as personal remedies for individual claimants.

R v. Morris (2019)

Mr. Morris, a Black man, was charged and convicted with possession of illegal firearms. During sentencing, the judge considered reports on anti-Black racism in Canada, and how such systemic racism impacted Mr. Morris' life. The judge held that these reports were admissible as they were not new to the law, being similar to *Gladue* reports for Indigenous offenders. Ultimately, Mr. Morris was sentenced to 12 months, reduced from 15 months due to various *Charter* breaches by the police. The Crown appealed the sentence, arguing that systemic racism can be taken into account in sentencing Black offenders *only if* the offender succeeds in demonstrating a *causal link* between systemic racism and the offence conduct. The Asper Centre submitted that this position imposes an unfair evidentiary burden on Black offenders and undermines the principles of substantive equality.

R v. Sharma (2019)

The Appellant, Ms. Sharma, is a bi-racial Indigenous woman. She was used as a drug mule and convicted of importing cocaine. She would have been a suitable candidate for a conditional sentence but for s.742.1(c) of the *Criminal Code*, which prohibited drug importers from receiving a conditional sentence. The appellant argued that s.742.1(c) violated her s. 15 *Charter* rights as it disproportionately affects Indigenous women by removing their 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 and the Women's Legal Education and Action Fund (LEAF) argued that the constitutionality of the impugned provisions must be assessed in the context of systemic discrimination against Indigenous people, especially Indigenous women, in the administration of criminal justice.

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 Supreme Court allowed the appeal in part, holding that all rights holders whose children attend CSF schools or participate in its programs are entitled to an educational experience that is substantively equivalent to the experience at nearby majority language schools. The Asper Centre intervened on the issue of the damages awarded and the application of the test in *Ward v City of Vancouver*. The Court held that the limited government immunity from damages awards does not apply to decisions made in accordance with government policies that are found to be contrary to s. 23 and applied the *Ward* test.



CONSTITUTIONAL CHALLENGE TO VOTING AGE

The Asper Centre, in partnership with **Justice for Children and Youth (JFCY)** and other child rights organizations, is laying the groundwork for a legal challenge of Canada's minimum voting age. The Asper Centre and the JFCY will conduct youth consultations to determine a legal approach to a constitutional challenge that both respects and represents the interests of children and youth.



The Asper Centre Clinic students conducted research in support of the challenge. Front row: Cheryl Milne, Mashoka Maimona, Keely Kinley, Karen Chen, Sonia Patel and Ashley Qian; Second row: Jason Lamb, Arjun Gandhi, Spencer Nestico-Semiani, Liam Turnbull and Hannah Goddard-Rebstein.

This is the first constitutional case that the Asper Centre is conducting on the ground level. The constitutional challenge will be against section 3 of the *Canadian Elections Act*, SC 2000 c 9, which prevents citizens under the age of 18 from voting in federal elections. Section 3 of the *Canadian Charter of Rights and Freedom* is clear that all Canadian citizens are allowed to vote, and the Supreme Court of Canada has made it clear that any limit on Canadians' right to vote must be clearly justified. The *United Nations Convention on the Rights of the Child* requires countries to "assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child" in accordance "with the age and maturity of the child." Increasing social science evidence about adolescent decision-making has established that adolescents are just as cognitively capable of voting as adults, which supports the position that the voting age restriction is unconstitutional.

The Asper Centre is partnered with the Canadian Civil Liberties Association, Canadian Coalition for the Rights of Children, Children First Canada, Society for Children and Youth of BC—Child and Youth Legal Centre, The Students Commission of Canada, and UNICEF Canada. Funding for the challenge is provided by the Court Challenges Program.

CANADIAN MEDIA FREEDOM SYMPOSIUM

On **March 6, 2020**, the Asper Centre and the International Human Rights Program (IHRP) co-hosted a symposium on Canadian media freedom. The symposium was developed out of the Media Freedom Model Laws Project, one of IHRP's student clinical legal education courses taught by **Adjunct Professor Vincent Wong**. This symposium brought together a small group of academics, civil society organizations, media experts, and leading practitioners to critically examine the various legal and non-legal challenges that threaten media and journalistic freedom in Canada.

The symposium began with an opening address by **Professor Irwin Cotler**, the former Minister of Justice and Attorney General of Canada. Attendees then discussed the clinic's research themes in groups: hate speech, defamation and libel, misinformation and disinformation, national security and public order, systemic restrictions to media, and whether there should be a discrete right to the freedom of the press.



Attendees: Irwin Cotler (Raoul Wallenberg Centre for Human Rights), Brendan de Caires (PEN Canada), Richard Stursberg (PEN Canada), Jeffrey Dvorkin (University of Toronto), Margaux Ewen (James W. Foley Foundation), Lauren Heuser (News Decoder), Lex Gill (Citizen Lab), Ryder Gilliland (DMG Advocates), Peter Jacobsen (Bersenas Jacobsen Chouest Thomson Blackburn LLP), Cheryl Milne (Asper Centre), Petra Molnar (IHRP), Justin Safayeni (Stockwoods LLP), Phil Tunley (St. Lawrence Barristers LLP), Elodie Vialle (University of Michigan), Cara Zwibel (Canadian Civil Liberties Association)

Facilitators: Vincent Wong (William C. Graham Research Associate, IHRP), James Flynn (2L), Isaac Gazendam (2L), Julie Lowenstein (3L) and Sonia Patel (3L).



MORRIS A. GROSS MEMORIAL LECTURE

The Overstory & the Understory: Reconciling Justice and the Rule of Law with Canada's Indigenous Peoples

February 27, 2020



The [Morris A. Gross Memorial Lecture](#) was established in memory of the late Morris A. Gross by the law firm Minden Gross LLP and by members of his family, friends and professional associates. The intention of the lectureship is to, every two years, bring to the Faculty of Law a distinguished scholar or a member of the practicing bar or bench for discussion with the student body and Faculty, and to deliver the bi-annual Morris A. Gross Memorial Lecture. This year, the lecture was delivered by **Jean Teillet**, an Indigenous rights lawyer and the great-grandniece of Louis Riel. She is the author of *Métis Law in Canada* (1999) and *The North-West is Our Mother: The Story of Louis Riel's People, the Métis Nation* (2019).

Different civilizations throughout history depict Justice as being impartial and blind to the effects of race, gender, and class. In her lecture, Ms. Teillet described how these ideals of justice are at odds with the reality that Indigenous peoples face within the Canadian legal system. She walked through how the criminal justice system has systemically failed Indigenous victims, such as Dudley George, JJ Harper, Helen Betty Osborne, Colton Bouchie and Cindy Gladue. She ended her lecture by advocating for restorative forms of justice—for the Canadian government to commit to working with Indigenous communities towards reconciliation.



Lunch with Ms. Teillet, Indigenous Law Students' Association, Faculty members, and the Asper Centre

CONSTITUTIONAL ROUNDTABLES

Courts Without Cases: The Law and Politics of Advisory Opinions

November 13, 2019



Professor Carissima Mathen (University of Ottawa, Faculty of Law) discussed her new book, *Courts Without Cases: The Law and Politics of Advisory Opinions* (2019), with **Professor Lorraine Weinrib**. The book explores the vitally important but understudied Canadian institution of Supreme Court references. As Professor Mathen emphasized, what is notable about the Canadian context is that the Court performs “both an adjudicative and an advisory function” during reference cases. This advisory role could pose problems with the separation of powers, as references allow the Court to extend their judicial functions beyond its optimal boundaries. Professor Mathen also explored other curious aspects of references, such as the Court’s discretion to refuse reference questions, and the fact that references are not theoretically legally binding.

Wealth, Equal Protection and Due Process

October 2, 2019

Professor Brandon Garrett (Duke University, Faculty of Law) presented his recent paper exploring “equal process” – a term he coined to describe the intersection between the Equal Protection and Due Process Clauses in the United States Constitution. Professor Garrett argued that the “equal process” approach should be more widely implemented to help address a series of pressing civil right issues, including the constitutionality of fines, loss of voter rights or driver’s licenses, and detention for inability to pay cash bail. This interdisciplinary approach is needed to adequately address the complex issues arising from poverty, but U.S. courts have historically preferred to examine constitutional matters in isolation. **Professor Vincent Chiao**, acting as the discussant, also provided insight on this issue in the Canadian context.



PANELS AND EVENTS

Careers in Constitutional Law

February 12, 2020



This panel provided career advice to aspiring constitutional lawyers through a diverse panel of talented lawyers. The panel, from left to right, consisted of **Emily Chan** (staff lawyer at Justice for Children and Youth), **Sinéad Dearman** (associate at Olthius Kleeer Townshend LLP), **Geetha Philipupillai** (associate at Goldblatt Partners), and **Padraic Ryan** (counsel at the Constitutional Law Branch of the Ministry of the Attorney General of Ontario). Each panelist spoke about the realities of long-term litigation, working with rotating governments, and the complexities of constitutional law.

Substantive Equality in Sentencing: *Morris* and *Sharma*

January 22, 2020

This panel discussed how historical disadvantage can be considered in sentencing, and how sentencing can be used to achieve substantive equality for marginalized groups. Discussion was focused on the Asper Centre's intervention in *R v. Morris* and *R v. Sharma*. The panel, from left to right consisted of **Emily Hill** (Aboriginal Legal Services, intervener in *Sharma* and *Morris*), **Nader Hasan** (Stockwoods LLP, counsel for Asper Centre in *Morris*), **Professor Hamish Stewart** (moderator), and **Jessica Orkin** (Goldblatt Partners, counsel for Asper Centre in *Sharma*).



CLINICAL LEGAL EDUCATION

Clinic Students

Mashoka Maimona, Keely Kinley, Karen Chen, Sonia Patel, Ashley Qian, Jason Lamb, Arjun Gandhi, Spencer Nestico-Semianiw, Liam Turnbull, Hannah Goddard-Rebstein, and Jeffrey Wang (half-time)

Clinic Projects

This year, Asper Centre clinic students worked on the constitutional challenge against the *Canada Elections Act*, 2000 SC c 9. Students looked into topics such as democratic theory, sociological studies on youth decision-making, international legal conventions, and international examples of lower voting ages. The clinic students also helped develop a youth consultation curriculum that could be implemented by partner youth organizations.

Clinic Speakers and Pro Bono Assistance

- Justice Kathlyn Feldman of the Court of Appeal for Ontario
- Mary Eberts who spoke about strategic litigation
- Nader Hasan of Stockwoods LLP
- Mary Birdsell of Justice for Children and Youth
- Joseph Cheng of the Department of Justice, Canada

Special thanks to our pro bono counsel, Nader Hasan and Geetha Phillipupilai who worked on R v Morris, and Adriel Weaver, Jessica Orkin and Kim Stanton, who worked on R v Sharma.



STUDENT ENGAGEMENT

2019-2020 WORKING GROUPS

Climate Justice

Students: Keely Kinley and Yara Willox (Leaders), Clara Pencer, Madeleine Carswell, Maddie Andrew-Gee, Courtney Cowan, Leah Kelley, Hunter Carlson, Adam LaRiviere, Haleigh Ryan, Leora Chapman, Florian Nagy



The Climate Justice Working Group on the Global Day of Action

November 18th, 2019 was the ‘Student Law Clinic Global Day of Action for Climate Justice.’ The event organizers ([GAJE, the Global Alliance for Justice Education](#)) asked participating student legal clinics to choose a project related to air pollution and complete it by or on November 18th to mark the date. The Asper Centre Climate Justice student working group prepared an opinion piece on the Ontario government’s potential constitutional obligations with respect to regulating air pollution in Chemical Valley. The [OpEd](#) urged the provincial government to honour its commitment to evaluating the impact of the new regulations in the winter of 2019-2020, and to recognize the role it can and should play in protecting environmental rights. In the second term, the group began convening a panel discussion for the law school community about the constitutional challenges to the federal carbon tax in Saskatchewan and Ontario, with experts in constitutional law, economics and government. Unfortunately, this panel was cancelled due to COVID-19.

STUDENT ENGAGEMENT

2019-2020 WORKING GROUPS

Refugee and Immigration

Supervisor: Staff lawyer David Coté at [HALCO \(HIV & AIDS Legal Clinic Ontario\)](#)

Students: Jeffrey Wang, Michelle Huang, and Tabir Shakeel Malik (Leaders), Charlotte Butler, Shindong (Simon) Kim, Scott Dawson, Henry Dennis, Rebekah Hwang, Trent Erickson, Jonathan Hou, Karan Sharma, Sarah Shin, Monica Layarda, Julia Gauze, Melanie Zetusian, Lien Shi, Annecy Pang, Jamie Ahn, Stephen Hope



Supervisor David Coté speaking with the Refugee and Immigration Working Group

Recently, there have been reported incidents in which CBSA (Canadian Border Services Agency) officers have randomly conducted street checks in minority-populated Toronto neighbourhoods. In light also of the United States ICE (Immigration and Customs Enforcement) raids and immigration camps, these events are extremely concerning. Thus, HALCO (the HIV & AIDS Legal Aid Clinic of Ontario) collaborated with our longstanding Refugee and Immigration working group to create a plain-language public legal information brochure detailing the powers of a CBSA agent and an individual's rights when interacting with them in the context of a street check. The working group researched and developed the brochure under the supervision of staff immigration lawyer at HALCO.

STUDENT ENGAGEMENT

2019-2020 WORKING GROUPS

Right to Equality in Accommodation

Supervisor: staff lawyer Alyssa Brierly at [CERA \(Centre for Equality Rights in Accommodation\)](#)

Students: Anna Hulchanski, Paniz Khosroshahy, Liam Turnbull, Madeline Stewart (Leaders), Rebecca Xie, Alisha Li, Jonathan Pettit, Yasmin Masoudi, Emily Tessier, Frank Griggs, Olivier Bishop-Mercier, Myim Bakan Kline, Sonida Gjonoy, Teresa Li, Amir Ghoreshi, Natalie Chan, Angel Leung, Kiyan Jamal

Access to adequate, appropriate, and affordable housing is a growing problem for many people in Ontario, especially those from marginalized groups. Low vacancy rates make affordable housing more difficult to find, and also increase the potential for housing discrimination, because landlords can be highly selective. Section 21.1 of the *Ontario Human Rights Code* states that the right to equal treatment with respect to accommodation does not apply where an accommodation is in a dwelling where the occupants share a kitchen or bathroom with the landlord or their family. This provision takes away protection from discrimination that Ontarians would have otherwise had. This working group will be assisting CERA by preparing a research memo on the exemption of shared residential accommodation, which will support CERA's future goal of challenging the constitutionality of S. 21.1.

Sex Worker Rights

Supervisor: Professor Marianna Valverde

Students: Mackenzie Claggett and Ryan Deshpande (Leaders), April Citter, Katelyn Johnstone, Jemma Lewis, Kaitlyn Helou, Militza Boljevic, Olivia Mazza, Kylie de Chastelain, Nicholas Buhite, Braxton Murphy, Adam Davis, Greta Hoaken, Martina Bellisario, Jenna D'aurizio, Aryaman Vaideeswaran, Willem Crispin-Frei, Lavallee Forbes

The *Protection of Communities and Exploited Persons Act*, SC 2014, c 25 (*PCEPA*) was introduced in response to the Supreme Court of Canada's 2013 decision in *Bedford v Canada*, where the Court found that three Criminal Code provisions which criminalized components of sex work unjustifiably violated section 7 of the *Charter*. Sex worker organizations and constitutional experts believe that the new provisions enacted in *PCEPA* remain unconstitutional because many of the harms identified in *Bedford* continue to be perpetuated. This working group conducted caselaw and academic literature research into the various arguments and *Charter* sections that could be employed in a constitutional challenge to the *PCEPA*. This summer, the group's research was synthesized and combined in a comprehensive memo to provide accessible information to sex-worker organizations in Canada that could assist in developing a constitutional challenge of the post-*Bedford* sex work laws.

WILSON MOOT

The University of Toronto once again secured first place at the 2020 Wilson Moot (February 22, 2020). The Wilson Moot is an annual constitutional law mooting competition, conceived to honour the outstanding contributions to Canadian law by the late Honorable Bertha Wilson. The team, consisting of **Karen Chen, Zoë Sebastien, Geri Angelova** and **Ahmed Elahi**, also received the first place prize for their written factums. They were supported by third-year student coaches **Sonia Patel, Suhasini Rao, Mariangela Asturi**, and **Eileen Church Carson**, as well as instructors **Cheryl Milne, Joseph Cheng**, and **Lorraine Weinrib**.

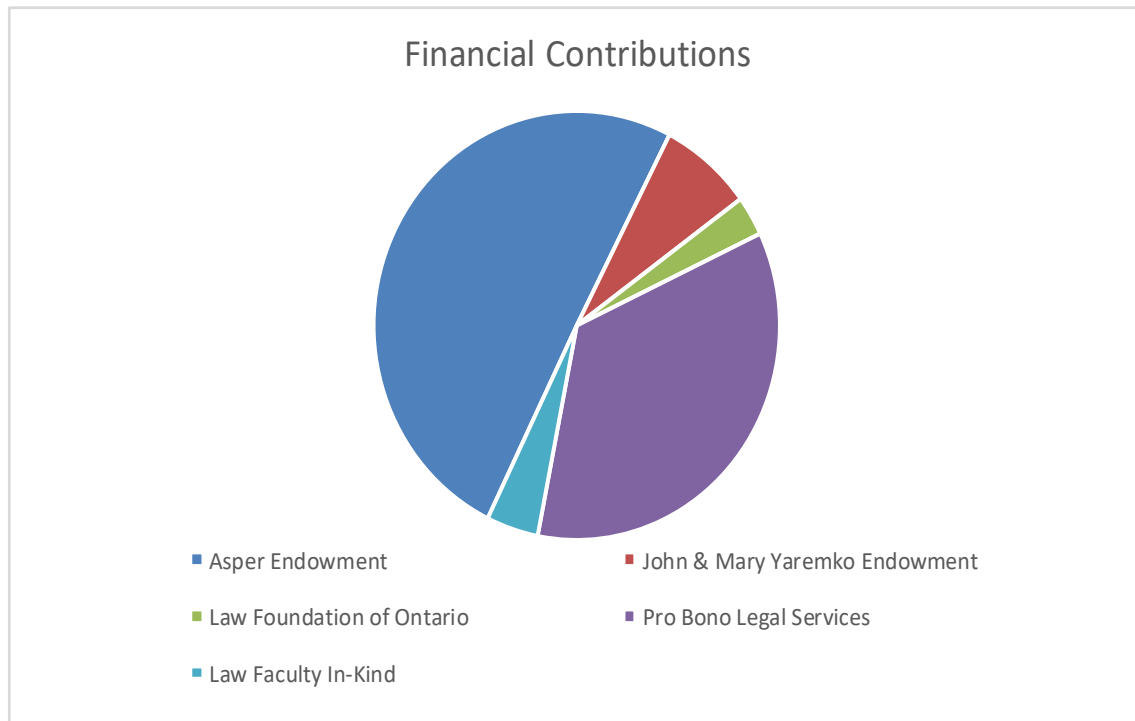


Left to Right: Joseph Cheng, Ahmed Elahi, Gergana Angelova, the Honourable Justice Kathryn N. Feldman of the Court of Appeal for Ontario, the Honourable Justice Malcolm H. Rowe of the Supreme Court of Canada, the Honourable Justice John B. Laskin of the Federal Court of Appeal, Zoe Sebastien, Karen Chen, and Cheryl Milne.

RESEARCH AND WRITING

Asper Centre Executive Director joined forces with child rights advocates to call for the safety of Canadian children deprived of their liberty during COVID-19 (May 6, 2020) - a group of child rights organization, lawyers, and advocates from across Canada, including Asper Centre Executive Director Cheryl Milne, joined together to write [an open letter to the Minister of Justice and Attorney General of Canada](#). Their letter urges the Canadian government to protect the rights, health, and well-being of young people who interact with the justice system during the COVID-19 pandemic. The group called for the government to pursue all efforts in diverting youth from institutes and releasing and reintegrating youth who are currently detain. They further urge for greater transparency in the health and well-being of young people in the justice system.

FINANCIAL



PRO BONO CONTRIBUTIONS

Kent Roach (University of Toronto, Faculty of Law), counsel for *AGO v. G, R v. Chouhan & Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*

Lorraine Weinrib (University of Toronto, Faculty of Law), consultant for *City of Toronto v. AGO*

Yasmin Dawood (University of Toronto, Faculty of Law), consultant for *City of Toronto v. AGO*

Alexi Wood (St. Lawrence Barristers LLP), counsel for *City of Toronto v. AGO*

Jennifer Saville (St. Lawrence Barristers LLP), counsel for *City of Toronto v. AGO*

Nader Hasan (Stockwoods LLP), counsel for *R v. Morris*

Geetha Philipupillai (Goldblatt Partners LLP), counsel for *R v. Morris*

Adriel Weaver (Goldblatt Partners LLP) counsel for *R v. Sharma*

Jessica Orkin (Goldblatt Partners LLP) counsel for *R v. Sharma*

Matthew Halpin & Debra Diepeveen (Norton Rose Fullbright LLP) Ottawa agents

ST. LAWRENCE
BARRISTERS LLP



STOCKWOODS
barristers



GOLDBLATT
PARTNERS



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, such as the Supreme Court 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.

ADVISORY GROUP



Professor Anna Su 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 Vincent Chiao, B.A. (University of Virginia), Ph.D. (Northwestern), J.D. (Harvard), is an Associate Professor in the Faculty of Law of the University of Toronto. He researches and teaches primarily in the area of criminal law and criminal justice, with a particular interest in the philosophical examination of its doctrine and institutions. He is the author of *Criminal Law in the Age of the Administrative State* (Oxford University Press 2018). He is also responsible for overseeing the Faculty of Law's appellate criminal law externship, which provides selected third year JD students with the opportunity to work directly on criminal appeals, including before the Ontario Court of Appeal and the Supreme Court of Canada.



Nader Hasan, B.A. (Harvard), M.Phil (University of Cambridge), J.D. (University of Toronto) is a partner at Stockwood Barristers in Toronto. He practises criminal, regulatory and constitutional law at the trial and appellate levels. Nader has been recognized by *Best Lawyers* magazine as one of Canada's leading appellate lawyers. He has appeared in 20 cases at the Supreme Court of Canada, including as lead counsel to the successful appellants in *Clyde River v. Petroleum Geo-Services Inc.*, 2017 SCC 40, a landmark Indigenous rights decision. Nader is a veteran Adjunct Professor, and he will be the constitutional-litigator-in-residence at the Asper Centre in the 2020-2021 school year.

ASPER CENTRE STAFF



Cheryl Milne is the Executive Director of the Asper Centre, and teaches a clinical course in constitutional advocacy at the University of Toronto, Faculty of Law. 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, the striking down of the reverse onus sections of the Youth Criminal Justice Act for adult sentencing, and an intervention involving the right of a capable adolescent to consent to her own medical treatment. She was the Chair of the Ontario Bar Association's Constitutional, Civil Liberties and Human Rights section, and the Chair of the Canadian Coalition for the Rights of Children and Justice Children and Youth. She is a member of the Steering Committee of the National Association for Women and the Law (NAWL) and the Child and Youth Law Section Executive of the Canadian Bar Association. She has served on the Mature Minors Expert Panel for the Medical Assistance in Dying project of the Council of Canadian Academies and on the Child and Family Services Review Board and the Human Rights Tribunal of Ontario.



Tal Schreier 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).

SUMMER STUDENTS

Amy Chen worked on the Asper Centre's intervention in *R v. Chouhan*. The case concerns the constitutionality of the abolition of peremptory challenges in jury selection, and whether this abolition infringes on ss. 7, 11(d), or 11(f) of the *Charter*. She also provided website and administrative support to the Asper Centre.

Adrienne Ralph worked on the Asper Centre's intervention in the *City of Toronto v. Attorney General Ontario* case at the Supreme Court. This case is centred around the constitutionality of the Ontario Government's 2018 decision to reduce the number of municipal ridings mid-election, particularly whether it infringes upon section 2b) of the *Charter*.

Angela Gu created a report on the Canadian Media Freedom Symposium, co-hosted by the Asper Centre and the International Human Rights Program. The report covers the current state of media freedom in Canada and provides recommendations for future advocacy efforts.

Matthew Mohtadi drafted a memo to consolidate the research of the Asper Centre's Sex Workers' Rights Student Working Group from the past academic year. The purpose of the memo is to provide potential public interest litigants with a constitutional analysis of the *Protection of Communities and Exploited Persons Act* (PCEPA).

Sonia Patel drafted the Asper Centre's contribution to the Media Freedom Model Laws Project and assisted with the preparation of the Centre's Strategic Plan.

DEDICATIONS

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.

Professor Marianna Valverde— Advisor to the Sex Workers Rights Working Group

Kylie de Chastelain – 2019-2020 Work Study Student

Teodora Pasca – Blog Contributor

Leslie Anne St. Amour – Blog Contributor

Mashoka Maimona – Blog Contributor

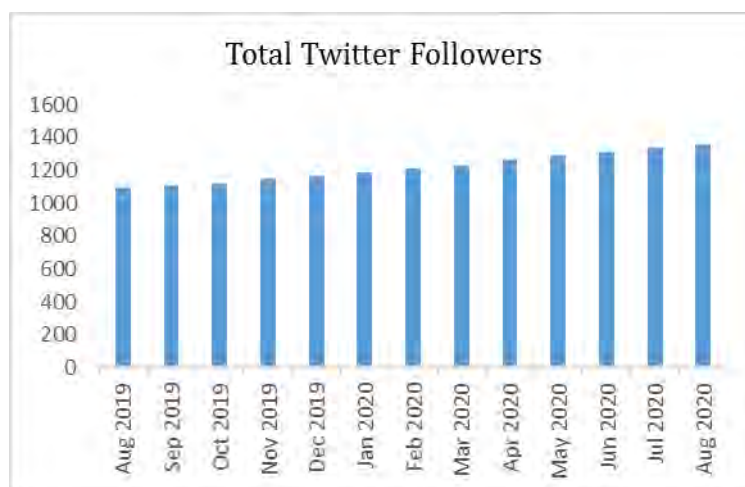
Shelby Rooney – Blog Contributor

Anju Xing – Blog Contributor

Ainslie Pierrynowski – Newsletter Contributor

MEDIA REPORT

The Asper Centre's twitter account has continued to grow in both followers and engagement. It has gained nearly 300 followers over the last year, which is especially remarkable as it began the period with a count of just over 1000. In the last 28 days alone, it has received 503 profile visits and over 15,500 impressions. Its tweets consistently have strong engagement rates and receive far more views than its follower base, thanks to retweets from popular accounts such as @UTLaw.



@AsperCentre



The David Asper Centre for Constitutional Rights (@daccr)



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IN THE NEWS

- *Law Times*, "Advocacy centre at U of T law school plans constitutional challenge to lower minimum voting age," 05 Feb 2020.
- *The Lawyer's Daily*, "Enhanced pre-sentencing reports face key Ontario Appeal Court challenge" 19 July 2020.
- *CBA/ABC National*, "Guidelines on the use of the notwithstanding clause" 15 Jan 2020—quoting Executive Director, Cheryl Milne.
- *The Lawyer's Daily*, "SCC issues landmark ruling on minority language education rights, Charter justification and damages" 12 Jun 2020—quoting Advisory Group Chair, Prof. Kent Roach.
- *CBC Here and Now*, "Should Canada lower its minimum voting age?" 3 Feb 2020—interview of Cheryl Milne and Asper Clinic student, Keely Kinley.





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