



David Asper Centre for Constitutional Rights  
UNIVERSITY OF TORONTO



## 2020 – 2021 Annual Report

Realizing Constitutional Rights through Advocacy, Education, and Academic Research

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# Message from the Executive Director

The 2020-2021 academic year was a difficult one for many of us. We began the fall term with the hopes of being able to teach and engage students in person with safety protocols in place to prevent the further spread of COVID-19 throughout the law school community. By Thanksgiving it became clear that our work needed to shift to online engagement exclusively. While it was a struggle, we managed to have a very productive year. The number of events were reduced, but the shift to online meant that our audiences increased. The hybrid method of teaching the clinic, with some students online and some in person, proved to be awkward; so, the shift to exclusively online improved the communication between us all. In November, 2020, we learned that we would be receiving a grant through the university's Pillar Sponsorship program to produce a podcast series. The growth in podcasting has also been an impact of the pandemic. While that project ultimately came to fruition in the fall of 2021 (details to be reported in next year's annual report), students worked through this past summer to develop topics and scripts. We encourage everyone to listen to our episodes of Charter: A Course on all of the major podcast platforms.

On the litigation front, our intervention in *R v Morris* was conducted by Nader Hasan by video conference, the method that all of the courts have conducted much of their work this past year. The popularity of watching court hearings online took the Court of Appeal by surprise as they had to initially adjourn the hearing for a short time that day in order to increase the capacity of the audience to permit viewers and counsel to participate. One positive outcome of the pandemic seems to be greater access to our courts, at least for audiences.

The pandemic has been hard on many people. We are grateful for the health of our community, but look forward to greater in-person engagement as we slowly shift out of the pandemic safety protocols. I am proud of the work that we have done over this year despite the restrictions.



Cheryl Milne, LL.B., MSW  
Executive Director



# 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.



# Our Strategic Plan

## Our Process

The David Asper Centre for Constitutional Rights has been in existence for over 12 years as part of the Faculty of Law University of Toronto. As part of its third strategic planning process, we met with key stakeholders, including faculty members and partner organizations to talk about our strengths and our future in one-on-one interviews. In an in-person session in November 2019, the Centre's Advisory Board met together with individuals from partner organizations, past constitutional litigators in residence and alumni of the Centre to review the work that the Centre has done to date and to set the strategic priorities for the next five years. The draft strategic plan was crafted over the summer of 2020 and approved in the Fall.

We identified three key priorities and thirteen strategies or objectives. The next stages of this process include developing an implementation plan to guide us in conceptualizing and realizing these strategic priorities.

## Our Strategic Direction

1

MAINTAIN

Maintain the reputation of the Centre for providing significant and scholarly contributions to constitutional rights advocacy in Canada.

2

STRENGTHEN

Strengthen the Centre's core competencies of education, constitutional expertise and collaboration.

3

EXPAND

Expand the Centre's capacity.

You can learn more about our 5-year strategic plan at [AsperCentre.ca](https://www.aspercentre.ca).



# Advocacy and Litigation

**Attorney General of Ontario v G (2020):** In 2002, G was found not criminally responsible on charges of sexual assault and other charges by reason of a mental disorder. In 2003, G was given an absolute discharge by the Ontario Review Board. G was obliged to register under the provincial sex offender registry and report to provincial authorities for life, pursuant to Christopher's Law (Sex Offender Registry), 2000, S.O. 2000, c. 1., and to register and report under the federal registry, pursuant to the Sex Offender Information Registration Act, S.C. 2004, c. 10 ("SOIRA"). G sought a declaration that the application of the federal and provincial sex offender registries to persons found not criminally responsible who are then granted a subsequent absolute discharge infringes their rights under ss. 7 and 15 of the Charter. G's application was dismissed by the Ontario Superior Court of Justice but was unanimously allowed by the Ontario Court of Appeal which found an infringement of G's s. 15 Charter rights (and those of individuals in his situation), and that such infringements cannot be saved under s. 1. The Court of Appeal declared Christopher's Law and SOIRA to be of no force or effect in their application to individuals in G's situation. It suspended the effect of the declaration for 12 months; however, it exempted G from this suspension. The Attorney General of Ontario appealed the portion of the Court of Appeal's judgment granting an individual exemption. The Asper Centre intervened at the Supreme Court of Canada to recommend to the Court flexible rules for the use of suspended declarations of invalidity and personal remedies for individual successful claimants. Quoting from the Asper Centre's legal arguments, the majority of the Supreme Court of Canada dismissed the appeal and held that when the effect of a declaration of invalidity is suspended, an individual remedy for the claimant under s. 24(1) of the Charter in the form of an individual exemption from the suspension will often be appropriate and just. View our factum [here](#).

**R v Morris (2021):** Mr. Morris, a Black person, was convicted for possession of illegal firearms. The sentencing judge allowed the defence's submissions on anti-Black racism in Canada and the effect of systemic racism on Mr. Morris. His sentence was reduced by 3 months due to Charter violations. The Crown appealed, arguing that evidence of systemic racism can only be considered if the offender can prove a causal connection between systemic racism and the commission of the offence. The Asper Centre argued that a framework similar to Gladue for Black offenders would promote substantive equality. More specifically, judges should always consider systemic factors in sentencing, regardless of the purpose of the sentence. In addition, offenders should not bear the burden of establishing a causal connection between systemic factors and the offence, pre-sentencing reports on systemic factors should be available for judges to consider, and the purposes and principles of sentencing should take into account anti-Black racism, in light of restorative justice and the principle of restraint. The decision was released on October 8, 2021. View our factum [here](#).



# Advocacy and Litigation

**R v Chouhan (2021):** The claimant challenged Parliament’s abolition of peremptory challenges in jury selection (s. 634) and a statutory change that made judges the adjudicator of truth in challenges for cause (s. 640). Mr. Chouhan argued that peremptory challenges can remove biased individuals from serving in the jury, which was no longer possible due to the change in the law. Thus, he claimed the abolition breached his ss. 7, 11(d), and 11(f) Charter rights. The Court of Appeal disagreed, holding that these amendments did not infringe his rights. However, the Court of Appeal held that since peremptory challenges are nevertheless a substantive (but non-constitutional) right, the abolition of peremptory challenges applies only prospectively, while the judge as decision-maker for challenges for cause applies both prospectively and retrospectively. The Supreme Court of Canada heard the Crown’s appeal on October 7, 2020. The Asper Centre in its submissions brought the Court’s attention to the increased bias resulting from peremptory challenges, taking a position that its abolition is constitutional. The Supreme Court of Canada rendered their judgement from the bench, holding that both changes were constitutional and should be applied retrospectively. The Supreme Court of Canada released its reasons on June 25, 2021, with Abella J dissenting in part and Côté J dissenting. View our factum [here](#).

**City of Toronto v Attorney General of Ontario et al (2021):** The Ontario government, shortly before the Toronto municipal election, reduced Toronto City Council to 25 seats from its original 47. While the Ontario Superior Court held that Ontario violated voters’ and candidates’ s. 2(b) freedom of expression rights, the Court of Appeal for Ontario allowed Ontario’s appeal. Municipal elections can be legislated by Ontario by virtue of s. 92(8) of the Constitution Act, 1867. On s. 2(b), the Court of Appeal was not convinced that s. 2(b) was actually infringed – not all government actions that impact or reduce expression constitutes an infringement. Toronto appealed to the Supreme Court of Canada. In its submissions, the Asper Centre argued that freedom of expression should not be interpreted narrowly: in the election context, that right goes beyond just voting and extends to all stages of an electoral process. The decision was released on October 1, 2021. View our factum [here](#).

**Unsuccessful Interventions:** The Asper Centre sought to intervene jointly with LEAF and WestCoast LEAF in the challenge to the Safe Third Country Agreement at the Federal Court of Appeal. The focus of the intervention was intended to be on the section 15 arguments. The Federal Court of Appeal dismissed our application and refused to grant intervener standing to any groups. If this matter proceeds to the Supreme Court of Canada we intend to renew our application to intervene.

The Asper Centre was also denied intervener standing by the Supreme Court of Canada in the appeal, *Anderson v Alberta* which focuses on the issue of advanced costs. Approximately half of the proposed interventions were dismissed. The appeal was heard on November 4, 2021.

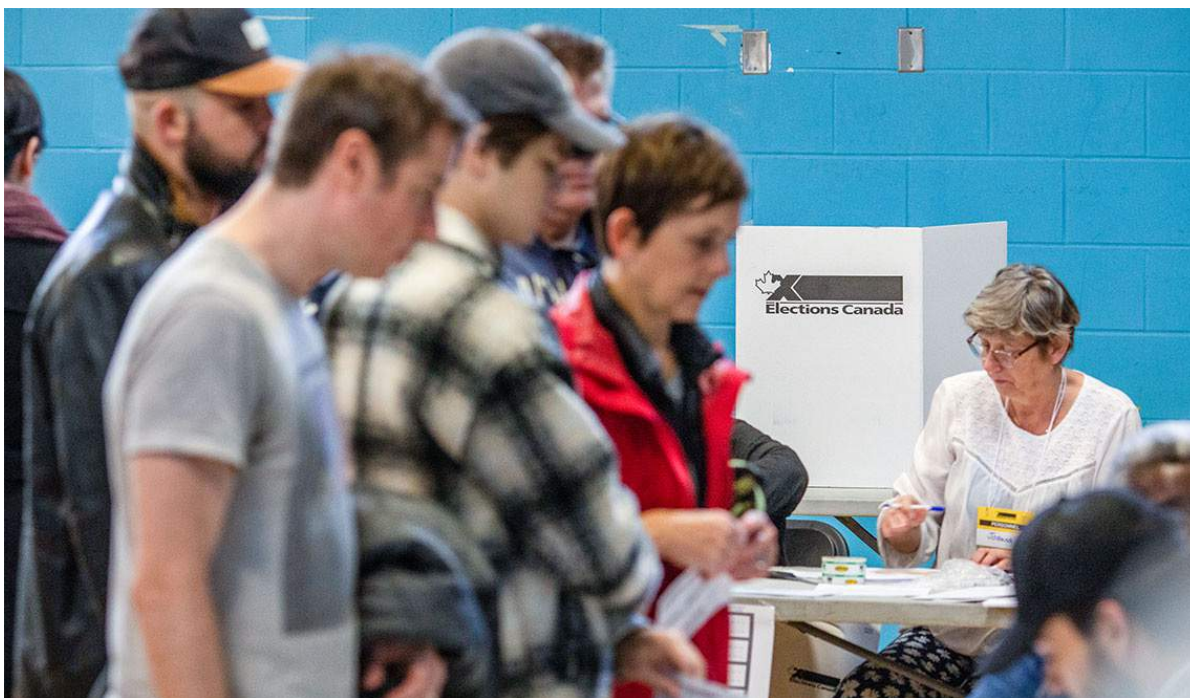


## Constitutional Challenge to the Voting Age

The Asper Centre, in partnership with Justice for Children and Youth (JFCY) and other youth rights organizations, has been hard at work this past year in anticipation of filing its application for this constitutional challenge. With the help of organizations like the Students Commission of Canada, Children First, the Society for Children and Youth of B.C., Vote16, and UNICEF Canada, the Asper Centre and JFCY have consulted and engaged with Canadian youth across the country, building a solid team of youth litigants along the way who are ready to challenge Canada's voting age.

They will argue that the Canada Elections Act, SC 2000 c 9, which requires eligible voters to be 18 years or older, infringes s. 3 of the Charter, which declares that “[e]very citizen of Canada has the right to vote”. There is growing international evidence of the benefits of lowering the voting age, including increased political awareness and political participation in the long-term. The social science evidence finds that adolescents share similar cognitive capabilities as adults.

The Asper Centre, JFCY and its partners have been preparing for this ground-level litigation since 2019. We look forward to filing our application and beginning the next stage of this challenge.





# Reconciliation Initiatives

“We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.”

– **Truth and Reconciliation Commission, Call to Action #28**

In response to the Truth and Reconciliation Commission’s Call to Action no. 28, the Asper Centre has engaged in the following key initiatives, among others, this past year.

## **Asper Centre Staff Take Indigenous Canada Course**

Staff successfully completed the Indigenous Canada course offered by the University of Alberta’s Faculty of Native Studies. Indigenous Canada is an online course that explores Indigenous histories and contemporary issues from an Indigenous perspective.

## **Collaboration with the Faculty of Social Work**

In January 2016, the Canadian Human Rights Tribunal (CHRT) ruled that funding and provision of child and family services to First Nations children, as well as implementation of Jordan’s Principle, was inequitable and discriminatory. Following this decision was the 2019 CHRT ruling 39 released on September 6th, 2019, which ordered Canada to compensate victims of this discrimination. The Asper Centre has partnered with a team from the Faculty of Social Work to operationalize this tribunal ruling by creating a detailed Taxonomy of Compensation Categories for First Nations Children, Youth and Families.

## **Introduction to s. 35 and the Duty to Consult Webinar**

In January 2021, the Asper Centre—in collaboration with the Indigenous Initiatives Office (IIO)—hosted a webinar on s. 35 of the Charter and the duty to consult and accommodate. The panel was moderated by Prof. Kerry Wilkins and featured Joel Morales (Olthuis Kleer Townshend LLP) and Candice Telfer (Ontario Ministry of Indigenous Affairs).

## **“So you want to implement UNDRIP...” Constitutional Roundtable**

The Asper Centre hosted a discussion with Prof. Kerry Wilkins in October 2020 on the mechanics of implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).



# Panel Discussions

## **An Introduction to the Duty to Consult**

The Asper Centre's Climate Justice student working group and the Faculty of Law's Indigenous Initiatives Office hosted a panel on the current issues surrounding the duty to consult.

After providing an overview of the doctrine first introduced in *R v Sparrow*, the panellists debated the necessity of preliminary assessments, which attempt to define the strength of an indigenous group's claim to determine the degree to which the duty is engaged. The panellists further discussed whether the Crown has a duty to facilitate these consultations by providing funding to indigenous groups that would otherwise be unable to meaningfully participate.

**Organizers:** Maddie Andrew-Gee, Yara Willox and Haleigh Ryan

**Moderators:** Professor Kerry Wilkins

**Panellists:** Joel Morales (Counsel at Oltius Kler Townshend LLP) and Candice Telfer (Acting Director of the Legal Services Branch in Ontario's Ministry of Indigenous Affairs).

**Guest:** Elder-in-Residence and Cree Knowledge Keeper Constance Simmonds

View the recording [here](#).



# Panel Discussions

## **The Constitutionality of Canada’s Greenhouse Gas Pollution Pricing Act**

The Asper Centre’s Climate Justice Working Group hosted a panel discussion on November 16, 2020 to discuss the Greenhouse Gas Pollution Pricing Act, in anticipation of the Supreme Court of Canada’s decision in *References re Greenhouse Gas Pollution Pricing Act, 2021 SCC 11*, which was released a few months later. View the recording [here](#).

**Panellists:** Sharlene Telles-Langdon (Counsel for Attorney General of Canada), Joshua Hunter (Counsel for the Attorney General of Ontario), Joshua Ginsberg (Counsel for Ecojustice) and Patricia Lawrence (Counsel for the Anishinabek Nation and the United Chiefs and Councils of Mnidoo Mnising).

## **Every Citizen: Perspectives on Lowering the Voting Age**

The Asper Centre, in collaboration with Justice for Children and Youth, UNICEF, Children First Canada, Society for Children and Youth of BC, and the Students Commission, hosted a webinar on the topic of lowering the voting age, ahead of our upcoming constitutional challenge. The webinar consisted of three panels focused on legal foundations and youth perspectives. Canadian Senator Marilou McPhedran, an advocate for lowering the voting age, discussed the strong international research on youth voting, such as in Scotland. KD Voss of the Students Commission noted that a vast majority of youth support lowering the voting age. View the recording [here](#).

**Panellists:** Senator Marilou McPhedran, Cheryl Milne, Mike Morden (Samara Centre for Democracy), Maisy Evans (Welsh Youth Parliament), Mary Birdsell, KD Voss, Margie Sanderson, Kamil Kanji, Lisa Wolff



# Panel Discussions

## COVID-19 Contact Tracing and the Canadian Constitution

The Asper Centre, in collaboration with the Schwartz Reisman Institute for Technology and Society, co-hosted this webinar where the authors of the highly collaborative research paper “[Test, Trace, and Isolate: COVID-19 and the Canadian Constitution](#),” discussed their research and conclusions. The paper reviewed the benefits and limitations of using contact tracing apps to identify people who have been exposed to COVID-19.

The panel discussed the usefulness of contact tracing apps, the privacy choices involved in the technical design of these apps, which app the government has selected to use and why, as well as the privacy impacts considered under the Canadian *Charter of Rights and Freedoms*. View the recording [here](#).

**Panellists:** Lisa Austin, Vincent Chiao, Beth Coleman, David Lie, and Andrea Slane.

Lisa Austin and David Lie pictured below.



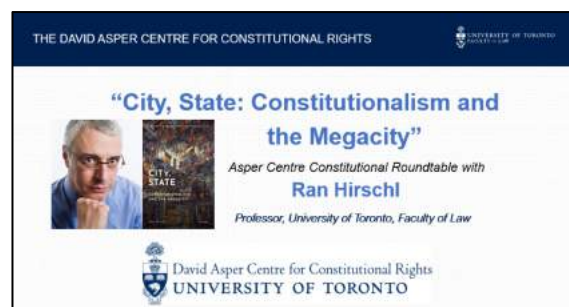
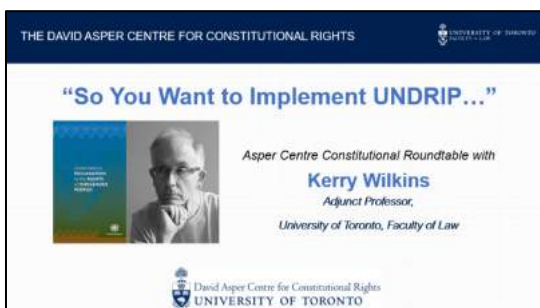
# Constitutional Roundtables

## Kerry Wilkins: So You Want to Implement UNDRIP?

On October 28, 2020, Professor Kerry Wilkins presented on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), based on his upcoming journal article in the University of British Columbia Law Review. Wilkins lamented that UNDRIP, which outlines and upholds Indigenous peoples' rights, does not adequately address important elements such as a definition of Indigenous peoples and the features of protection. Wilkins feared that courts and governments will simply reapply the principles of Aboriginal title, which would undermine the potential of this Declaration. Nevertheless, Canada should move forward on UNDRIP's implementation by consulting Indigenous peoples, instead of delaying it further, said Wilkins. View the recording [here](#).

## Professor Ran Hirschl: City, State: Constitutionalism and the Megacity

Professor Ran Hirschl presented his new book, "City, State: Constitutionalism and the Megacity", which explores the role of growing urban centres in the context of their constitutional status and relationship with other levels of government. In light of the Court of Appeal for Ontario's judgement that the Ontario government's decision to reduce the City of Toronto's wards during an election period was constitutional, Professor Hirschl outlined examples of other countries that have been bolstering their cities' constitutional protections, such as India and South Africa. Professor Hirschl argued that constitutionally entrenching cities' powers may also improve other social conditions such as housing because it could strengthen bottom-up approaches to governance. View the recording [here](#).



# Clinical Legal Education

## **Clinic Students**

Olivia Eng, Militza Boljevic, Myim Bakan Kline, Geri Angelova, Lucas Youmans, Yara Willox, Sarah Nematallah, Evan Linn, Ryan Deshpande, Vanshika Dhawan, Melissa Montana (half-time winter term)

## **Clinic Projects**

This year, Asper Centre's clinic students continued working on the constitutional challenge against the federal voting age. The clinic students researched potential expert witnesses and began recruiting potential youth litigants. Students also helped to draft our factum in the Supreme Court of Canada appeal in *City of Toronto v Ontario (Attorney General)*, and worked with our constitutional litigator in residence, Nader Hasan on climate change litigation and the appeal to the Supreme Court of Canada of *R v Sharma*. Our Winter Term student worked on an application to intervene at the Supreme Court of Canada, the voting age challenge and background research on the Safe Third Country Agreement Appeal.

## **Clinic Speakers and Pro Bono Assistance**

We had a number of speakers who joined us through Zoom this year. We thank Mary Birdsell of Justice for Children and Youth, criminal defence counsel Faisal Mirza and Emily Lam, lawyers Jessica Orkin and Senwung Luk, and journalists Kirk Makin and Shanifa Nasser for speaking to students about their expertise. We also thank returning guests who managed to redesign their presentations to suit the online class, Joseph Cheng of the Department of Justice, Canada, Justice Kathryn Feldman of the Ontario Court of Appeal, Emily Wesson of Norton Rose Fulbright LLP, and Sooin Kim of the Bora Laskin Library.



# Student Engagement

## 2020-2021 Student Working Groups:

### Climate Justice

**Advisors:** Prof. Andrew Green and Kerry Wilkins

**Student Volunteers:** Madeleine Andrew-Gee, Haleigh Ryan, Yara Willox (Leaders), Natasha Burman, Maia Caramanna, Jessie Cartoon, Angela Feng, Masha Janjuz, Adam Kouri, Grace Li, John Metzger, Sacha Poirier-Feraud, Zachary Rosen, Cameron Somerville, Peter Voltsinis

The Climate Justice Working Group focused on legal advocacy projects related to the carbon tax appeal at the Supreme Court of Canada and the Coastal Gaslink Pipeline extension into unceded territory. The working group hosted a panel discussion on the carbon tax challenge, where counsel for the Attorneys General of Canada and Ontario, Ecojustice, the Anishinabek Nation, and the United Chiefs and Councils of Mnidoo Mnising spoke on constitutional and federalism issues arising from this appeal. The working group also co-hosted a panel with the Indigenous Initiatives Office on s.35 and the Duty to Consult.

### Indigenous Rights

**Advisor:** Prof. Kent Roach

**Student Volunteers:** Lavalee Forbes, Maggie Shi (Leaders), Niema Binth Mohammad, Elise Burgert, Adam Iggers, Christopher Main, Kyra McAlister, Jessica Pan, Lauren Paparousis, Isabelle Savoie, Alison Schwenk, Jordyn Selznick, Emily Sheppard, John River Sommerhalder

The Indigenous Rights Working Group conducted research on the oversight of the Canada Border Services Agency, in relation to Bill C-3, An Act to Amend the Royal Canadian Mounted Police Act and the Canada Border Services Agency Act and to make Consequential Amendments to Other Acts. The significance of the lack of an independent oversight body of the CBSA is particularly pertinent to the rights of the Mohawk Nation at Akwesasne, which is located on both sides of the Canada-US border. The working group presented its findings with recommendations to Parliament, Public Safety Minister Bill Blair, and the Civilian Review and Complaints Commission. Although Bill C-3 died in Parliament due to the August 2020 prorogation, the working group expects that their report will be informative to future legislation on federal police oversight.



# Student Engagement

## Prisoners' Rights Handbook

**Advisor:** John Howard Society and Canadian Civil Liberties Association

**Student Volunteers:** Hudson Manning, Taskeen Nawab (Leaders), David Baldrige, Rowan Barron, Martina Bellisario, Caterina Cavallo, Dahlia Horlick, Leila Far Soares, Danielle Gagné, Martin Heslop, Daniel Mester, Adrianna Mills, Max Samuels, Anisha Sivathas, Dominique Wightman, Alison Yu

The Prisoners' Rights Working Group addressed a critical gap in prisoners' legal rights: the lack of up-to-date, easy to understand, inmate-centred, and Charter-based literature concerning inmates' rights and correctional institutions' associated responsibilities. The working group consulted with stakeholders to determine the scope and logistics of such a handbook. The handbook is currently under development and will be further advanced by next year's working group.

## Artificial Intelligence and Constitutional Rights

**Advisor:** Prof. Vincent Chiao

**Student Volunteers:** Annecy Pang, Amy Chen, Angela Gu, Adrienne Ralph (Leaders), Katy Beeson, Cecilia Kim, Dilan Brar, Jack Olson, Jasveen Singh, Stephanie Rei, Yuliya Mykhaylychenko, Rachael Tu, April Lewtak, Jamie Peltomaa, Naiya Samara, Troy Klassen

The Artificial Intelligence and Constitutional Rights Working Group has been conducting research on artificial intelligence law in the international context and its regulation in Canada, in light of privacy implications. The working group will be submitting a policy brief to the House of Commons Standing Committee on Access to Information, Privacy, and Ethics on the topic of law enforcement's use of facial recognition software. This technology engages with individuals' s. 8 Charter rights in light of its effects on surveillance, biometric data collection, and impact on consumers, vulnerable community members, and other individuals. The potential abuse and misuse of facial recognition technology by law enforcement also implicates Charter ss. 7, 9 and 15 rights, which will be included in the students' brief.





# Student Engagement

## Sex Workers' Rights

**Advisor:** Prof. Marianna Valverde

**Student Volunteers:** Militza Boljevic, Olivia Mazza (Leaders), Erica Berry, Nicolas DiBiase, Emilie Richards, Mackenzie Faulkner, Riyana Manerikar, Kaitlyn Nelson, Sawyer Peloso, Noah Springer, Lauren Teixeira, Talia Wolfe, Eloise Hirst, Rebecca Rosenberg

This year, the Sex Workers' Rights Working Group expanded upon last year's memo on effective and ineffective legal arguments concerning sex work and the evidence of the persistent harms within the new sex work laws since Bedford. Those laws, which are within the Protection of Communities and Exploited Persons Act, SC 2014 c 25, are currently under review as per s. 45.1(1). The group intends to make a formal submission to the Speaker of the House of Commons.

## Refugee and Immigration Law

**Supervisor:** Warda Shazadi Meighen (Partner, Landings LLP and Adjunct Professor, University of Toronto Faculty of Law)

**Student Volunteers:** Monica Layarda, Anson Cai, Kiyon Jamal (Leaders), Grayson Alabiso-Cahill, Emily Albert, Rachel Clark, Amar-Kareem Guimba, Ikram Handulle, Katherine Roberts, Katarina Kusic, Yuchen Liu, Hamza Naim, Thomas Ritthaler, Reed Smith, Jeffrey Thompson Vandespyker, Wei Feng Yang

The Refugee and Immigration Law Working Group conducted research related to two important cases before the courts. In support of the Asper Centre's motion for leave to intervene in the Safe Third Country Agreement (STCA) appeal (Canada (Citizenship and Immigration) v Canadian Council for Refugees, 2021 FCA 72), the working group researched principles of legal procedure and judicial decision-making related to issues surrounding a judge's failure to decide on every constitutional question submitted before the Court. Unfortunately, the Federal Court of Appeal dismissed all applications for leave to intervene. The working group also researched the constitutionality of s. 34 of the Immigration and Refugee Protection Act, which outlines specific prohibited actions that would deem a refugee claimant inadmissible, without stipulating any required mental element for the prohibited actions. The working group assessed the effects of non-deportation impacts to assess the unconstitutionality of the provision in the face of claimants' s. 7 Charter rights.



# Wilson Moot

Congratulations to Myim Bakan Kline, Meg Cormack, Maija Fiorante and Greta Hoaken for taking first place in the Wilson Moot (second time in a row!). The team also took second place for Best Factum. Many thanks to adjunct moot advisors Cheryl Milne (Executive Director, Asper Centre) and Joseph Cheng (General Counsel, Department of Justice Canada's National Litigation Sector [Ontario Regional Office]) who helped coached the team, along with fellow 3L student coaches Geri Angelova, Ahmed Elahi and Zoë Sebastien.



# Research and Writing

## **Toolkit for Evidence Informed Child Protection Practice**

This series of child welfare toolkits was developed with Dr. Barbara Fallon at the Factor-Inwentash Faculty of Social Work with funding from the Ontario Law Foundation and with input from key stakeholders in the areas of child welfare and child protection. The purpose is to synthesize the current legislation, case law, and social science research regarding the practice of child protection as a resource for practicing child protection lawyers and the child welfare sector. The toolkits are accessible to lawyers and social workers and other professionals working in child protection and available through the [cwrp.ca](http://cwrp.ca). The goal of these briefs is to help ensure that decisions made at each point in the child welfare service continuum are made in the best interest of the child. Actors within the child welfare system make decisions to protect children from harm and to ensure that the adults in their lives are acting in their best interests. In 2017, the Child, Youth, and Family Services Act (CYFSA) was implemented in Ontario; its full impact on the litigation of cases is not yet known. The intervention of children's aid society ("Society") workers into the private lives of families has a profound and permanent impact on both caregivers and their children. Given the serious impact of the state becoming involved in families, it is critical that these actions are based on the best available social science evidence. We believe that any decisions should have a strong evidentiary basis and that information should be helpful to inform these decisions should be accessible, up-to-date and accurate.

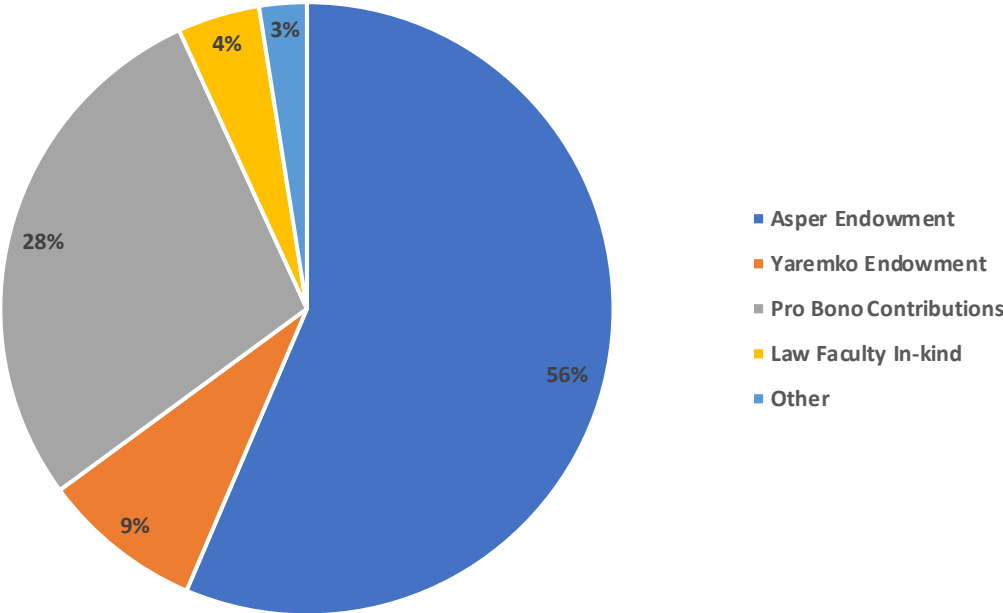
## **Blog Posts:**

- *R v Chouhan*: The Supreme Court of Canada finds room for disagreement (July, 2021)
- In Their Memory The Calls to Action Must Be Fulfilled (May, 2021)
- Court Challenges Program's Human Rights Expert Panel Seeks Members (April, 2021)
- SCC's Reference re GGPPA Decision: an important milestone, but still a long road to travel (April, 2021)
- How should judges consider anti-Black racism in sentencing? Asper Centre intervenes in *R v Morris* (February, 2021)
- An Introduction to the Duty to Consult (February, 2021)
- Asper Centre Intervention Influences SCC on Suspended Declarations (December, 2020)
- Examining the Constitutional Concerns of Urbanization and Megacities (November, 2020)
- *Fraser v. Canada*: What's the Point of S. 15? (November, 2020)
- Overcoming Challenges to Implementing UNDRIP in Canada (November, 2020)
- *R v Chouhan*: The Constitutionality of Abolishing Peremptory Challenges (November, 2020)
- Supreme Court of Newfoundland and Labrador dismisses Constitutional Challenge to Travel Restriction (October, 2020)



# Financial

Financial Contributions 2020 – 2021



# Pro Bono Contributions

## Faculty Contributions

- Professors Lorraine Weinrib and Yasmin Dawood provided expertise and drafting assistance to our intervention in *City of Toronto v Ontario (Attorney General)*.
- Professor Kent Roach provided supervision and guidance to our working group on Indigenous Rights.

## Pro Bono Counsel

- Nader Hasan of Stockwoods LLP and Geetha Philippillai of Goldblatt Partners LLP represented the Centre in *R v Morris*.
- Alexi Wood and Lilliane Cadieux-Shaw of St. Lawrence Barristers LLP were counsel to the Centre in *City of Toronto v Ontario (Attorney General)*.
- Adriel Weaver and Jessica Orkin of Goldblatt Partners LLP represented the Centre in our intervention application in *Anderson v Alberta*.
- We thank Matthew Halpin and Debra Diepeveen of Norton Rose Fulbright LLP for their continued assistance as our Ottawa agents

ST. LAWRENCE  
BARRISTERS LLP



## Constitutional Litigator-in-Residence: Nader Hasan



Nader is a partner at Stockwood Barristers in Toronto. He practises criminal, regulatory and constitutional law at the trial and appellate levels. He has an expertise in digital privacy law and search and seizure law, and has appeared in many of the leading cases in this area.

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 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 also serves on the Advisory Board of the David Asper Centre for Constitutional Rights. 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), a co-author of a forthcoming book on *Search and Seizure* (Emond Publishing), and author of numerous articles on criminal and constitutional law.

Nader brings a cross-border perspective to his practice. He previously practised with a leading litigation firm in New York, appearing in both New York State and U.S. federal courts. Today, he regularly advises Canadian citizens in relation to criminal and regulatory issues with a multi-jurisdictional dimension, and regularly advises Canadians detained abroad.

Nader acts regularly for clients seeking to vindicate their constitutional rights in high-profile cases. He has acted for the wrongfully convicted and asylum seekers. He acts for Indigenous groups and environmental NGOs in environmental and constitutional cases. He also acts for civil liberties groups, including the Criminal Lawyers' Association (CLA), the British Columbia Civil Liberties Association (BCCLA), and the David Asper Centre for Constitutional Rights.

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.



# In Memoriam: Joseph Arvay



Joseph Arvay, OC, OBC, QC, (1949 – 2020) was the Asper Centre’s first litigator-in-residence. His role shaped the future of this distinguished role in the ensuing years.

Joe was a champion in constitutional litigation, having made his mark through a vast assortment of landmark cases at the Supreme Court of Canada. During his career, Joe fervently argued before the courts to protect sexual orientation rights in *Egan*, same-sex marriage rights in *Reference Re Same-Sex Marriage*, the right to medical assistance in dying in *Carter*, sex workers’ rights in *Bedford* and *Downtown Eastside*, freedom of expression and equality in *Little Sisters*, and the constitutionality of safe injection sites in *PHS Community Services Society*, just to name a few.

“Joe was fearless, and his intellectual curiosity knew no bounds,” says Professor Kent Roach, who worked with Joe on several cases. “His advocacy shaped the Charter of Rights and Freedoms and always in the direction of helping the disadvantaged. He also knew how to have fun and never took himself too seriously. He will be sorely missed.”



# Advisory Group



## **Kent Roach – Chair (until April, 2021)**

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.*



## **Vincent Chiao**

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.





# Advisory Group



## **Yasmin Dawood**

Professor Yasmin Dawood is an Associate Professor at the Faculty of Law and the Department of Political Science with a B.A. from University of Toronto, an M.A. and Ph.D from University of Chicago, and a J.D. from Columbia Law School. She is also the Canada Research Chair in Democracy, Constitutionalism, and Electoral Law. She has testified before Parliament as an election law expert, and been interviewed on election law issues by CBC Radio, The Agenda, and Power and Politics. Prior to joining the Faculty of Law she was a Postdoctoral Fellow at the Centre for Ethics, University of Toronto.



## **Nader Hasan**

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.



# Advisory Group



## **Patrick Macklem**

Patrick Macklem is the William C. Graham Professor of Law. He holds law degrees from Harvard University and University of Toronto, and a B.A. from McGill University. He served as Law Clerk for Chief Justice Brian Dickson of the Supreme Court of Canada and as a constitutional advisor to the Royal Commission on Aboriginal Peoples. He has taught at the European University Institute and been a visiting scholar at Stanford Law School, Harvard Law School and UCLA School of Law. He is also a Fellow of the Royal Society of Canada.



## **David Schneiderman**

David Schneiderman, B.A (McGill) 1980, LL.B. (Windsor) 1983, LL.M. (Queen's) 1993, is Professor of Law and Political Science. He was called to the Bar of British Columbia in 1984 where he practised law and then served as Research Director of the Canadian Civil Liberties Association in Toronto from 1986-89. He was Executive Director of the Centre for Constitutional Studies, an interdisciplinary research institute, at the University of Alberta from 1989-99. Professor Schneiderman has authored numerous articles on Canadian federalism, the Charter of Rights, Canadian constitutional history, and constitutionalism and globalization.



## **Hamish Stewart**

Professor Hamish Stewart joined the Faculty of Law at the University of Toronto in 1993. Before attending law school, he studied economics (B.A., University of Toronto, 1983; Ph.D., Harvard University, 1989) and taught for a year in the economics department at Williams College. He received an LL.B. degree from the University of Toronto in 1992, clerked at the Ontario Court of Appeal in 1992-93, and was called to the Ontario Bar in 1998.



# 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.



**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, 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



**Leila Far Soares** worked on the police accountability project and the constitutional challenge to the voting age.

**Wei Yang** worked on the constitutional challenge to the voting age. He also researched legal issues related to prospective interventions by the Asper Centre.

**Szymon Rodomar** helped launch the Asper Centre's podcast project. He also assisted with the Compensation Taxonomy on the First Nations Child and Family Caring Society case, through the Factor-Inwentash Faculty of Social Work.

**Alina Valachi**, through the Factor-Inwentash Faculty of Social Work, managed the Toolkit for Evidence-Based Child Protection Practice project. The project synthesizes legal and social science research in the area of child protection to develop a plan that protects the interests of children within the child welfare system.

**David Baldrige** worked with Alina Valachi and Alison Gillanders on the Toolkit for Evidence-Based Child Protection project.

**Alison Gillanders** also worked alongside Alina Valachi and David Baldrige on the Toolkit for Evidence-Based Child Protection project.

**Alison Schwenk** provided assistance on various projects as the casebook research assistant.

**Eunwoo Lee** focused on the emerging jurisprudence that cites the United Nations Convention on the Rights of the Child (UNCHRC). The research aimed to determine the applicability and relevance of the UNCHRC in Canada's courts. Eunwoo's research will be used to develop a presentation at the 2022 National Judicial Institute Conference.



# Thank You

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Thank you to all the faculty members, staff, alumni and legal practitioners who have helped the Centre navigate through this remote year. We would also like to acknowledge the following student contributors this year and thank them for their support.

**Work Study Students:** Julia Nowicki and Annie Chan

**Podcast Researcher:** Vivian Cheng

**Blog Contributors:** Cameron Somerville, Teodora Pasca, Annie Chan, Jeffrey Wang, Julia Nowicki, and Ainslie Pierrynowski

**Newsletter Contributors:** Annie Chan, Julia Nowicki, Ainslie Pierrynowski, Lavalee Forbes, Sarah Nematallah, Monica Layarda, Anson Cai, Wei Yang, Maia Caramanna, Geri Angelova, Annecy Pang, and Rachael Tu

These students' contributions along with those of the authors of last year's annual report appear in part or inform the content of this year's Annual Report.

We also thank the following members of faculty who have contributed to the work that we have done this past year: Prof. Kent Roach, Prof. Yasmin Dawood, Prof. Lorraine Weinrib, Prof. Vincent Chaio, Prof. Andrew Green, Prof. Lisa Austin, Adjunct Prof. Kerry Wilkins, and Prof. Marianna Valverde.



# Media Report

The Asper Centre’s Twitter account has continued to grow in both followers and engagement. It has gained several hundred followers over the last year—as of this report’s publication, the account has 1,545 followers. In the last 28 days alone, it has received 3,093 profile visits, 11 mentions, and 13,400 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)**



**AsperCentre.ca**



# Asper Centre in the News

Toronto Star, “How should systemic anti-Black racism impact Ontario criminal sentences? A landmark appeal is set to begin Thursday,” Feb 10, 2021. Quoting Asper Centre’s former litigator-in-residence Nader Hasan.

<https://www.thestar.com/news/gta/2021/02/10/how-should-systemic-anti-black-racism-impact-ontario-criminal-sentences-a-landmark-appeal-is-set-to-begin-thursday.html>

The Walrus, “Looking for Justice, Finding Betrayal”.

<https://thewalrus.ca/looking-for-justice-finding-betrayal/>

Toronto Star, “When ‘sentencing and structural’ racism is considered in sentencing”, Jun 13, 2020.

<https://www.thestar.com/news/gta/2020/06/12/when-systemic-and-structural-racism-is-considered-in-sentencing.html>

National Magazine, Canadian bar Association, “A democratic check on Section 33”, July 6, 2021, quoting Executive Director Cheryl Milne.

<https://nationalmagazine.ca/en-ca/articles/law/in-depth/2021/a-democratic-check-on-section-33>

UofT News, “Indigenous students recognized for academic achievement, leadership and advocacy”, Feb 11, 2021, celebrating Jessie Stirling (JD 2020), who worked in the Indigenous child welfare working group at the Asper Centre.

<https://www.utoronto.ca/news/indigenous-students-recognized-academic-achievement-leadership-and-advocacy>

Canadian Lawyer Mag, “Jordan case and medical negligence claim are first appeals in SCC’s winter session”, Jan 15, 2021, mentioning the Asper Centre’s intervention in *City of Toronto v Attorney General of Ontario*.

<https://www.canadianlawyermag.com/practice-areas/litigation/jordan-case-and-medical-negligence-claim-are-first-appeals-in-sccs-winter-session/336921>





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