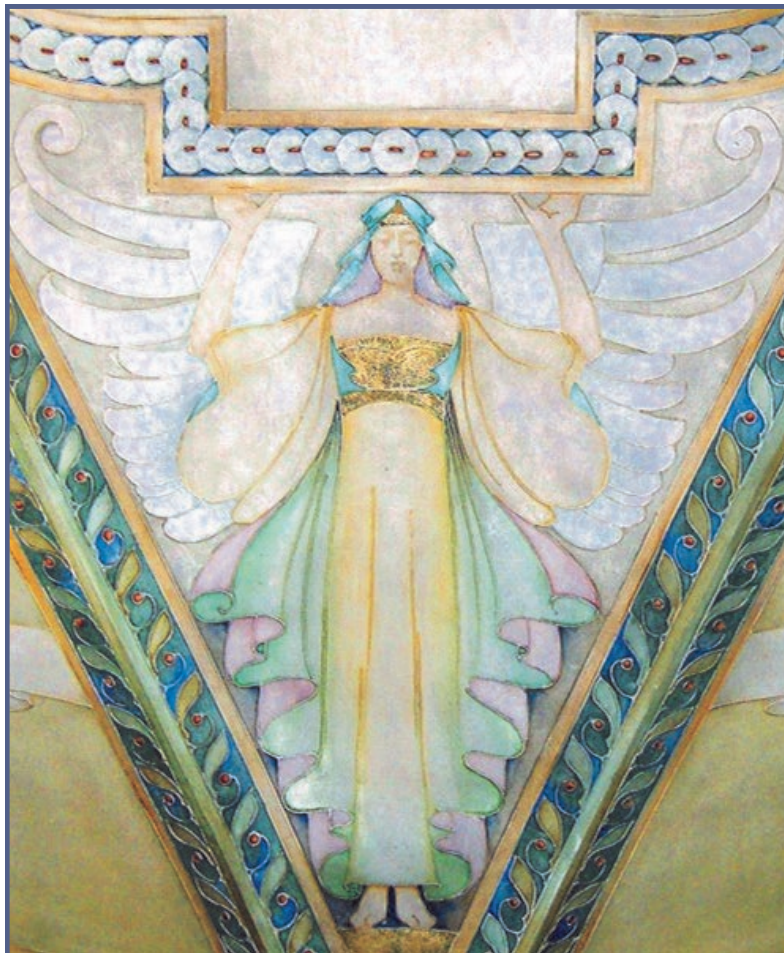




# David Asper Centre for Constitutional Rights UNIVERSITY OF TORONTO

## Annual Report 2012-2013



**Realizing Constitutional Rights through Advocacy, Education and Academic Research**



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# About the Asper Centre

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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

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The 2012-2013 academic year proved to be another success for the Asper Centre in respect of its interventions in significant Charter litigation. We were successful in gaining intervener standing in three cases at the Supreme Court and a fourth case before the Ontario Superior Court of Justice. Our litigation provided meaningful practical learning experiences for the clinic students. Two of our interventions demonstrated just how unpredictable litigation can be, with the appeal we expected not to proceed, going ahead, while the one that seemed more stable, being quashed for mootness. Students learned the 'hurry-up, now wait, then wait, now hurry-up' pace of litigation. They also had the first-hand experience of the steps that must be taken to avoid conflicts of interest when we were required to erect an ethical wall with one clinic student owing to the work done during a summer job for an opposing party.

While establishing a role in leading constitutional litigation was a significant goal in the Centre's strategic plan, it was not the only one. We also aimed to make a significant contribution to research and writing in the area of constitutional law. Our conference on social science evidence in Charter litigation, drew many paper proposals and has resulted in publication of many of those papers in two dedicated issues of the National Journal of Constitutional Law. I am proud of this contribution to the literature in this area coming at a time when the records filed in constitutional litigation continue to grow and change.

This year also marked the launch of our Constitutional Litigator in Residence program with the visit by Joseph Arvay, QC in the month of September and his subsequent appearance on our behalf in the Bedford Appeal. Although we all wished that Joe could have stayed with us for a longer period of time, the students were thrilled with the opportunity to learn from one of the most respected constitutional litigators in the country. We have continued the program and the quality of the appointments into 2013-2014 with John Norris who will be with us the entire term.

This report marks our fifth year in operation, a milestone that we will celebrate with an anniversary symposium on November 8, 2013. The time has flown by for me. I am more than pleased that we have been able to stake out a place for the Centre in some of the most significant Charter litigation in the country in the last five years. I am also proud that our hard work has also started to pay off in the area of research and writing with the success of the Social Sciences Evidence Conference and the subsequent publication of its papers. We are following a similar model with a conference focusing on remedies scheduled for February 28, 2014.

I continue to enjoy working with both Faculty and students in this exciting area of law and am proud of the Centre's accomplishments as a result of this successful collaboration including our friends of the constitutional law bar.



Cheryl Milne, LL.B, MSW  
Executive Director

# Advocacy and Litigation

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## ***Canada (Attorney General) v Bedford: constitutionality of the prostitution laws***

Joseph Arvay Q.C. and Cheryl Milne represented the Asper Centre on June 13 2013 at the Supreme Court of Canada in the appeal of the constitutional challenge to several prostitution-related provisions of the Criminal Code. The Ontario Court of Appeal had previously struck down the prohibition against keeping a bawdy house and read in qualifications to the provisions in respect of living off the avails of prostitution. The Court considered itself bound by the 1990 *Prostitution Reference* and upheld the ban on communication for the purposes of prostitution as a justified limit on freedom of expression. The Asper Centre was the only intervener on the issue of *stare decisis*, the impact of previously decided cases on the ruling. The Asper Centre argued that the Attorney Generals' assertion that the s. 7 analysis was precluded by the *Reference* was incorrect because there is no issue of binding precedent where different legal considerations are raised. In 1990, the question before the Court was whether communication for the purposes of prostitution engaged an economic liberty interest, and the principles of fundamental justice had yet to be fully developed. The applicant's position was that the s. 7 security interest was engaged, and the provisions offended the principles of fundamental justice because they were vague, overbroad and grossly disproportionate. The Asper Centre also argued that there is no *stare decisis* where there is a significant and material change in the social and legislative facts underpinning the constitutional challenge. The Centre proposed a non-exhaustive list of factors that can be used by lower courts to determine when there is a material change in legislative facts and thus the lower court is justified in departing from Supreme Court precedent. The Supreme Court's judgment is pending.

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

The Asper Centre was granted intervener standing in its first case before the Ontario Superior Court of Justice in a motion brought by the Attorneys General to strike the pleadings in this application. The application seeks declarations that sections 7 and 15 of the Charter have been infringed by the failure of the Ontario and Federal governments to develop comprehensive strategies to address homelessness. The Asper Centre was represented by Cheryl Milne and Professor Kent Roach, who presented the oral arguments. The Asper Centre intervened to address the governments' claims that the remedies sought were not within the jurisdiction of the court. The applicants sought declarations of constitutional violations, an order that Canadian and Ontario must develop a comprehensive plan to deal with homelessness, and retention of supervisory jurisdiction. Section 24(1) of the Charter states that the court has the authority to order "such remedy as the court considers appropriate and just in the circumstances." The applicants argued that a determination of what is "appropriate and just" can only be decided after a full hearing, using evidence to determine the circumstances by which to measure the appropriateness of the remedy. The Asper Centre argued that the proposed remedies are within the broad remedial jurisdiction of provincial superior courts and respect the role of the judiciary, the legislature and the executive. The Asper Centre also argued that the remedies are fair to the government and that they were consistent with precedent. The motion was heard May 27-29, 2013, and a decision striking the application was made on September 6, 2013. An appeal is expected.

## ***Canada v Zajicek***

The Asper Centre had been granted intervener standing in this appeal of an extradition case before the Supreme Court of Canada. The Centre was represented by John Norris. In May 2013, the Court quashed the appeal for mootness.



## ***Divito v Minister of Public Safety and Emergency Preparedness***

The Asper Centre was granted intervener standing in this appeal from the Federal Court of Appeal on the constitutional challenge to the *International Transfer of Offenders Act*. Professor Audrey Macklin and Cheryl Milne appeared on behalf of the Asper Centre. The case was a judicial review of the Minister's refusal to accept a transfer request by a Canadian citizen. The legal issue was whether s. 8 of the *Act*, which grants the Minister discretion to refuse prisoner transfer requests, violates the s. 6 *Charter* right to enter Canada. The Asper Centre intervened on the relationship between constitutional and administrative law principles in refusing the Minister's decision under the *Act*. Although the statute may be found to be a justified infringement of the s. 6 mobility right, the statute authorizes discretion. Therefore, each time the discretion is exercised, there is a potential for the infringement of *Charter* rights. The Asper Centre argued that this discretion must be reviewed to ensure its compliance with the *Charter*, and proposed an administrative law proportionality framework that would incorporate the justification analysis of *Charter* review into the flexibility of judicial review. This followed the Supreme Court's decision in *Dore v Barreau du Quebec*, which empowered administrative decision makers to issue rulings that violated *Charter* rights, and stated that no less deference is due because the decision involved a *Charter* consideration. The Court has released its decision upholding the constitutionality of the provision on September 19, 2013.

## ***R v Kokopenace; R v Spiers***

The Asper Centre intervened to address the issue of equality rights in these two appeals heard in the Ontario Court of Appeal in April 2012. An issue in the claim was that the jury pools from which the juries were selected were unrepresentative because the government failed to include a large number of potential jurors who were First Nations people living on-reserve. The Court of Appeal released its decision in the *Spiers* appeal on November 21, 2012. It granted the appeal and ordered a new trial on other grounds. The Court of Appeal released its decision in the *Kokopenance* appeal on June 14, 2013. While it did not address the equality rights argument, it granted the appeal and ordered a new trial.

## ***R v Davey, R v Cardoso, R v Yumnu, R v Emms, R v Duong***

The Asper Centre was granted intervener standing on in five appeals being heard together addressing the impact of the practice of "jury vetting" by the Crown and police. The Asper Centre's submissions focused on the privacy rights of potential jurors and the impact of the practice on the administration of justice. The Supreme Court released its decision in December 21, 2012. The Court upheld the convictions of all accused and dismissed the appeals, but did acknowledge that jurors have the right to privacy in respect of some of the records examined.

## ***Attorney General of Canada v. Downtown Eastside Sex Workers United Against Violence Society and Sheryl Kiselback***

The Asper Centre intervened in this case that addressed the test for public interest standing in a constitutional case challenging the prostitution provisions. The Asper Centre argued for a remedy-focused approach, and asserted that the requirement that litigants be specially prejudiced by a law, or they stand to receive a personal remedy, is not relevant. The Supreme Court released its decision in September 2012, and adopted a purposive and flexible approach to grant public interest standing to the appellants.

# Social Science Evidence Conference

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## Social Science Evidence in *Charter* Litigation: 30 Years of Fact Finding

On November 9, 2012, the Asper Centre hosted a conference entitled, “Social Science Evidence in *Charter* Litigation: 30 Years of Fact Finding.” The conference began with a panel discussion featuring Justice Robert Sharpe of the Ontario Court of Appeal, Justice Susan Himel of the Ontario Superior Court of Justice—who wrote the *Bedford* judgment in which Canada’s prostitution laws were found to violate the Charter—and Justice Lynn Smith of the Supreme Court of British Columbia, who concluded, in the recent case *Carter v Canada*, that the Criminal Code provisions prohibiting physician-assisted suicide violate s.7. Each panelist offered insight into the role that social science evidence plays in Charter litigation. Justice Sharpe traced the historical development of the use of expert evidence in Canada and highlighted some of the issues facing the courts as they continue to emphasize the importance of expert evidence.

Following a question-and-answer period with the three panelists, conference attendees were invited to take part in a number of breakout sessions. In one session, Yasmin Dawood and Michael Pal from the University of Toronto Faculty of Law, along with Professor Robert MacDermid of York University, discussed the role of social science evidence in election law, particularly as demonstrated in high-profile Supreme Court cases such as *Harper v Canada* and *R v Bryan*. Professor MacDermid brought to the discussion the perspective gained from having acted as an expert witness in *Bryan*. In another breakout session, Charles-Maxime Panaccio from the University of Ottawa, Roslyn Mousley from the Department of Justice, and Vanessa MacDonnell and Julia Hughes, from the University of Ottawa and the University of New Brunswick, respectively, presented on the various methodologies employed by courts when they rely on social science evidence in constitutional cases.

At the lunchtime plenary, Professor William Wicken, from York University’s Department of History, discussed the uncertain role of the historian in the litigation of aboriginal claims. Afternoon plenaries covered ethical issues along with specific case examples including the Insite case and litigation involving marginalized communities. Two upcoming issues of the *National Journal of Constitutional Law* will feature papers written by the panelists on the topics discussed. (Excerpt taken from the article written by Craig Mullins in the February 2013 Asper Outlook)





# Panels and Lectures

## "The Quest for A Charter Equality Test: Has the Longest Way Round Been the Shortest Way Home?"

The Honorable Lynn Smith, retired justice of the Supreme Court of British Columbia was the speaker at this year's Gross Memorial Lecture. She took the audience through the various iterations of the Charter equality test, which is used by the courts to determine if the s. 15 equality guarantee is violated. The s. 15 right has been on a journey that was the "longest way around," but it comes "home" to the first s. 15 case decided by the Supreme Court: *Andrews v. Law Society of British Columbia*. The Charter equality test Smith and her colleague Professor Black have proposed brings clarity to the "Andrews test" in the hopes that s. 15 will not become a "B-list" right, to be claimed only in the alternative, after the more articulated s. 2(b) or s.7 rights. The audience was fascinated by the insight Smith had about the latest s. 15 case decided by the Supreme Court, *Quebec v. A*. It clarified that the legislature's justification for the law or action would fall outside the s. 15 test and would be analyzed in the s.1 analysis. The court held 5/4 that the exclusion of de facto spouses from spousal support and division of property legislation infringes s. 15, but was upheld by s. 1. Smith left the audience with three interesting questions raised by *Quebec v. A*. What is the shelf life of a Charter case, given the rapidly changing social context of Canada? What will happen to s. 15 decisions decided after *Andrews* but before *Kapp*? And most interestingly, what is the role of voluntary activity or choice in constitutional thinking? That is, can something be held out as an analogous ground if people choose to participate in the group? The Gross A. 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. This lecture was co-sponsored by the John and Mary Yaremko Fund for Multiculturalism and Human Rights.

## ***R v. Morgentaler*: Reflections After 25 Years**

(January 17, 2013. Speakers: Dr. Robert Scott, Appellant and Co-Accused; Morris Manning QC, Counsel for the Appellants; Kirk Makin, justice reporter with the Globe and Mail; Lorraine Weinrib, Professor, Faculty of Law, University of Toronto; Carolyn Egan, expert witness at trial. Moderated by Paul Schabas, Blake, Cassels & Graydon LLP and co-counsel for the Appellant and Executive Director Cheryl Milne.)

On January 28, 1988, the Supreme Court of Canada struck down Canada's abortion law as unconstitutional under s. 7 of the *Charter*. The legal battle was long, dramatic and groundbreaking, and the case remains one of the most significant decided under the Canadian *Charter*. The panel provided a unique opportunity to hear from participants in the case as they reflected on the historic events, the legal strategy, and the relevance of the case on its 25<sup>th</sup> anniversary. About 200 people attended the event, and segments of the discussion were aired on CBC Radio's the Sunday Edition and featured in the popular news blog *The Torontoist*.



Presenters: Cheryl Milne, Carolyn Egan, Lorraine Weinrib, Morris Manning, Paul Schabas, Dr. Robert Scott & Kirk Makin

# Panels and Lectures

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## Respecting Democratic Constitutional Change

On March 4, 2013, Craig Scott, Member of Parliament for Toronto-Danforth and the Official Opposition Critic for Democratic and Parliamentary Reform, came to the Faculty to discuss his legislative proposal, *An Act Respecting Democratic Constitutional Change* (Bill C-470). Prior to being elected, he was on faculty at Osgoode Hall Law School (2000-2012) and University of Toronto Faculty of Law (1989-2000). The bill would replace the *Clarity Act*, and is based on the Supreme Court of Canada's judgment in the *Quebec Secession Reference*. This enactment requires the Government of Canada to enter into negotiations with the Government of Quebec if the latter submits to its voters in a referendum a clear question concerning a constitutional change and the majority of valid votes cast are in favour of the proposed change.

## Constitutional Roundtables

This year, the Asper Centre assumed organizational responsibility for the Law Faculty's Constitutional Roundtables to host the following talks.

**The Rule of Law as a Constitutional Essential:** Dr. Pavlos Eleftheriadis of the University of Oxford explored the relationship between the rule of law and parliamentary supremacy. (September 19, 2012)

**Ethics and Expert Witnesses:** Panelists Joseph Arvay, Q.C. (counsel for the plaintiffs) and Professor Wayne Sumner (expert witness on ethics of assisted suicide) reflected on *Carter v. Canada*. (September 25, 2012)

**The Disallegiant Heart: Constitutional Citizenship and the History of Marital Denaturalization:** Helen Irving, University of Sydney, discussed constitutional citizenship, by examining the legal practice of the denaturalization of citizen women who married alien men. (October 16, 2012)

**Of Irregular Votes and Robocalls: Resolving disputed elections in Canada and New Zealand:** Andrew Geddis, Professor at the Faculty of Law at the University of Otago. (October 24, 2012)

**Riffing on the Federalist:** Professor Sanford Levinson from the University of Texas at Austin discussed the *Federalist's* relevance to contemporary political discussion. This event was co-sponsored with the Canada Research Chair in Constitutionalism, Democracy and Development. (November 28, 2012)

**Judging Social Rights:** Jeff King, senior lecturer at Senior Lecturer at the Faculty of Laws University College London, was a distinguished visitor in 2013 at the Faculty of Law teaching an intensive course on social rights. This event was co-sponsored by the International Human Rights Program. (January 10, 2013)

**Common Good, Public Reason, and Constitutional Law:** Wojciech Sadurski is Challis Professor of Jurisprudence at the University of Sydney and the Professor of the Centre for Europe at Warsaw University. He discussed the concept of public reason as a useful tool to help us identify which laws should be deemed to be unconstitutional. (January 23, 2013)

**Social and Economic Rights - A South African Perspective:** Judge Yacoob has been a judge of the Constitutional Court of South Africa. He wrote the Court's decision in the *Grootboom* case involving housing rights under the South African constitution. (February 14, 2013)

**Exit, Voice and Disloyalty:** Heather Gerken is the J. Skelly Wright Professor of Law at Yale Law School. Professor Gerken discussed how minorities can wield influence over national policy by virtue of the fact that they routinely administer it. (March 4, 2013)

# Clinical Legal Education

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**Clinic Students:** Clara Morrissey, Clifford Anderson, Hannah Freeman, Jennifer Luong, Krista Nerland, Laura Spaner, Marcus McCann, Maya Ollek, Sean Tyler, Tony Drake, Louis Century (2nd term)

The students were divided up in groups of two to work on the various projects this term. This year's students were able to participate in a number of innovations in the clinic course. They were the first to experience our Constitutional Litigator in Residence program and benefited from the expertise of Joseph Arvay, QC a preeminent constitutional litigator. We also introduced a session on project management for legal projects through lawyer Suzanne Wood of Norton Rose LLP (now Norton Rose Fulbright LLP). She walked the students through the process to help them organize their projects and work productively in teams. We also piloted a method of evaluation drawn from the clinical legal education literature which required the students to maintain reflective journals and to draw from those reflections and the various assignments in the course to create a final summative of their work in the clinic. This method focuses on the learning process to a greater extent than the final product of the project, allowing students to be mindful of the progress that they have made in a course that emphasizes the development of practical skills.

"I've also learned through this class that I enjoy working in a collaborative environment. I found the best part of the class to be my brainstorming sessions with [my partner], and the class discussions." - student reflection

**Clinic Projects:** Students worked on a number of applications for intervener standing at the Supreme Court of Canada including *Canada v Bedford*, *Divito v Minister of Public Safety and Emergency Preparedness* and *Zajicek*. Two students also researched and wrote an extensive report on the legal issues arising from our treatment of women prisoners in Canada, focusing on aboriginal women and women with mental health issues. This material was drawn upon in a brief we worked on with the International Human Rights Program for the Special Rapporteur for Indigenous Peoples.

## Clinic Speakers:

- ♦ Zachary Green of the Attorney General of Ontario's Constitutional Law Branch and Abbie Deshman of the CCLA presented on policy advocacy and review.
- ♦ Douglas Elliott of Roy Elliott O'Connor LLP presented on the test case client.
- ♦ Hon. Justice Katherine Feldman of the Ontario Court of Appeal presented on appellate advocacy
- ♦ Susan Barker guided the students through research on legislative facts, an essential component to any constitutional challenge.
- ♦ Professor Kent Roach spoke on remedies
- ♦ Suzanne Wood of Norton Rose LLP led our project management session.

## Pro Bono Assistance:

- ♦ John Norris represented us in *Canada v Zajicek*
- ♦ Professor Audrey Macklin was our counsel in the *Divito* Appeal
- ♦ Professor Kent Roach was our counsel in *Tanudjaja v AG Ontario* and *AG Canada*
- ♦ Martha Healey of Norton Rose Fulbright LLP was our pro bono agent on all our SCC cases

# Student Engagement—Working Groups

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## Refugee and Immigration Law Working Group

*J.D. students: Aria Laskin, Sofia Ijaz, Azeezah Kanji, Aron Katz Zaltz*

This group focused on the new legislation and policies put in place that created designated countries and foreign nationals in the refugee determination system; reduced health benefits for refugee claimants; and created new barriers for citizenship. The group worked with Professor Audrey Macklin and the Canadian Association of Refugee Lawyers (CARL) writing legal memoranda and exploring public education options. The group researched the possible revocation of jus solis (born in Canada) citizenship, public interest standing after Downtown Eastside Sex Workers, and constitutionality of the ban of wearing face coverings during the citizenship ceremony.

## Privacy Law Working Group

*J.D. students: Krista Nerland, Maya Ollek*

This group investigated the ways in which Section 8 of the *Charter* protects people against unreasonable search and seizure, protects individuals' in the face of new and changing technologies. Students completed a public education component, which was a map of surveillance cameras located in the vicinity and their compliance with statutory guidelines. The students also produced a report on how judges perceive emerging technologies and are ruling on them in the context of s. 8. The group worked with Professor Lisa Austin.



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## Asper Centre Outlook Working Group

*Student editors: Janet Luneau and Craig Mullins.*

The students created and edited content for the twice-annual newsletter. Student contributors included: Aria Laskin, Aron Katz Zaltz, Dharsha Jegatheeswaran, Maya Ollek, Louis Century, Azeezah Kanji, Katherine MacDonald, Shweta Chaudhary, Lisa Wilder, Sofia Ijaz, Azeezah Kanji, Krista Nerland, Maya Ollek, Sarah Rankin, Leah Sherriff, Sylvie McCallum-Rougerie, Emilie Lahaie, Janet Lunau, Rebeka Lauks, Chris Evans, Liting Lin Cong and Jesse Elders.



# Student Engagement– Mooting

## Wilson Moot Win

For the fourth year in a row, the University of Toronto Wilson Moot Team achieved outstanding results with the support of the Asper Centre. The team this year included Lara Guest, Adam Sproat, Haran Viswanathan and Thomas Wagner. This year's problem considered fictional amendments to the Criminal Code that would permit physician-assisted suicide and presented arguments on whether the denial of access to a physician-assisted suicide for an individual with a mental illness violates that person's Charter rights.

The team once again won the top prize for best written argument. The team came in second overall, and Lara Guest received the prize for second place oralist. The team was up against first place winners Windsor Law School in the final round before a panel of judges comprised of the Honourable Justice Thomas Cromwell of the Supreme Court of Canada, the Honourable Justice Robert Sharpe of the Court of Appeal for Ontario and the Honourable Justice Mary Saunders of the British Columbia Court of Appeal.



Mooters Lara Guest, Adam Sproat, Thomas Wagner and Haran Viswanathan with Justice Thomas Cromwell (second from the right).

## Asper/IHRP Summer Internships

Katherine MacDonald interned at the Refugee Law Office of Legal Aid Ontario and provided research support to the Canadian Association of Refugee Lawyers (CARL) in their constitutional challenge to the cuts to the Interim Federal Health Program for refugees. At the RLO she drafted arguments in a judicial review application and with the supervision of lawyer Melinda Gayda successfully represented an Afghan refugee claimant family before the IRB.

Shweta Chaudhary worked with the South Asian Legal Clinic of Ontario (SALCO) on a variety of issues ranging from disability benefits, social justice, immigration, family law to employment law. She assisted clients obtain disability benefits and present claims for refugee status and citizenship.

**"Right from the very first day of my internship till the last day, I was encouraged to be part of as many and as varied legal projects as possible." - Shweta Chaudhary**

Aron Zaltz's Internship with the Canadian Centre for Victims of Torture afforded him the opportunity to be engaged in matters of both Canadian administrative law and international human rights law. He assisted in the monitoring of Canada's refugee policies in the protection of victims of torture seeking asylum. He attended the Canadian Council for Refugees' spring consultation in Vancouver as part of the Centre's delegation.

## Student Research Assistants

**Aoife Quinn**, Research Assistant Summer 2013—Aoife worked this summer for the Centre conducting legal research and writing support for the Centre.

**Leora Jackson**, Research Assistant Summer 2013—Leora worked this summer at the Asper Centre with the generous support of Torys LLP.

**Abigail Westby**, Research Assistant 202-2013 — Abby was our work study student during the school year keeping our website and social media up to date.

# Looking Ahead

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## Asper Centre Five Year Anniversary

On November 8, 2012, the Asper Centre will celebrate its five year anniversary with a symposium on the impact of the ground-breaking Charter litigation that the Asper Centre has intervened on. The Asper Centre will also publish a special edition of the Asper Centre Outlook featuring articles written about the cases we have intervened on over the last five years.



## Clinical Legal Education and Working Groups

As we await a decisions in one clinic case from last year (*Canada (Attorney General) v Bedford*) Tanudjaja students will prepare applications for leave to intervene in new constitutional appeals before the Supreme Court and appeals from lower court decisions in our other interventions. During the fall term, John Norris will be the Asper Centre's Constitutional-Litigator-In-Residence. He will mentor clinic students with their case files and provide a public lecture for the law school. Working groups will continue the work of last year's groups on refugee law and privacy rights .

## Remedies Conference

On February 28, 2013, the Asper Centre will host "Constitutional Remedies: Are They Effective and Useful?" a conference examining in detail the remedies available in constitutional litigation. A call for papers was sent out with September 30, 2013 as the deadline. Selected conference papers will be considered for publication as part of a special issue of the *National Journal of Constitutional Law*.

## Constitutional Roundtables

Scheduled speakers include Constitutional Litigator in Residence, John Norris, Leti Volpp of Berkley, Norman Daniels of Harvard, Benjamin Berger from Osgoode, Sandra Liebenberg of the University of Stellenbosch and Cristina Rodriguez of Yale.

# Website Updates

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Our Cross-Canada Appellate Cases and Supreme Court Case Material sections have been continuously updated over the past year. The Asper Centre website serves the important role of making case summaries, facts and information readily available to the public for research and education. Webcasts of events run by the Asper Centre are available on the website. Look for the addition of the record in the Morgentaler case in the coming months.

## Webcasts available on our website:

- Morris A. Gross Memorial Lecture: Hon. Lynn Smith (February 27, 2013)
- R v Morgentaler: Reflections After 25 Years (January 29, 2013)



# Research and Writing

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## **Assisted Human Reproduction Act: conference papers and book**

Our publication of the papers from our conference is in press. Watch for an announcement on our website when the book comes out.

## **Conference on Social Science Evidence: journal symposium**

Two upcoming issues of the National Journal of Constitutional Law are dedicated to the papers from this conference. The journal issues have been co-edited by Executive Director Cheryl Milne.

## **Upcoming Conference on Constitutional Remedies**

On February 28, 2014, the Asper Centre is hosting a one day conference, Constitutional Remedies: Are They Effective and Meaningful? The call for papers went out and we have a number of sessions that will stimulate and develop an ongoing dialogue on the effectiveness of remedies. The goal is to thoroughly examine the available remedies pursuant to s.24 and s.52 of the Charter as well as remedies for the violation of Aboriginal and treaty rights under the constitution. In keeping with last year's conference, the National Journal of Constitutional Law will also be considering these papers for publication in a dedicated issue.

# Asper Centre in the News

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"John Norris Named Litigator In Residence," *The Law Times* (July 9 2013) - Report on the Asper Centre's 2013-2013 Constitutional Litigator in Residence, John Norris.

Todd Aalgaard, "R v Morgentaler, 25 Years Later," *Torontoist* (30 January 2013) – discussing the panel discussion presented by the David Asper Centre on the 25<sup>th</sup> anniversary of the *R v Morgentaler* decision

Michael Harris, "Civil Warrior," *The Walrus* (October 2012) – a profile of our 2012-2013 Constitutional-Litigator-In-Residence, Joseph Arvay QC.

Cristin Schmitz, "Sex case opening the door to more Charter challenges," *The Lawyer's Weekly* (5 October 2012) – Executive Director Cheryl Milne on the implications of the Supreme Court's decision in *AG Canada v Downtown Eastside Sex Workers United Against Violence*.

"Amid Kenney's worthy reforms, a misstep on refugees' health," *Globe and Mail* (23 August 2012)- Professor Audrey Macklin is quoted : "Regular, preventive health care is cheaper and more effective than emergency treatment."

Andrew Stobo Sniderman, "Harper v. The Judges," *Maclean's* (25 August 2012) - Advisory Group Chair Kent Roach and Professor Audrey Macklin quoted about the courts as government opposition, by UofT Law Student Andrew Stobo Sniderman.

# Pro Bono Contributions

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## Faculty Support:

- ♦ Prof. Lisa Austin consulted with the Privacy working group.
- ♦ Prof. Kent Roach represented the Centre in *Tanudjaja et al v AG Ontario ad AG Canada*. He is the Advisory Board Chair.
- ♦ Prof. Lorraine Weinrib co-chaired *R v Morgentaler : Reflections after 25 Years* and helped to organize the Social Sciences Evidence conference.
- ♦ Prof. Trudo Lemmens is the lead editor of a book that includes papers from the *Re. Assisted Human Reproduction Act* conference.
- ♦ Prof. Audrey Macklin represented the Asper Centre in the Supreme Court of Canada in *Divito v Minister of Public Safety and Emergency Preparedness* and consulted with the Working Group on immigration matters.
- ♦ Professors David Dyzenhaus, Ayelet Shachar and Ran Hirschl provided great assistance to the Constitutional Roundtable.

## Pro Bono Lawyers:

- ♦ Martha Healey of Norton Rose Fulbright – our pro bono Ottawa agent for all our SCC interventions; her contribution has been substantial including review of materials, and organizing and filing the copious amounts of paper still required by the Court, including during the Christmas holidays.
- ♦ Joseph Arvay, QC served as our constitutional litigator in residence and represented the Asper Centre in the Supreme Court of Canada on *Canada v Bedford*
- ♦ Paul Schabas of Blake, Cassels & Graydon LLP - serves on our Advisory Group.
- ♦ John Norris represented the Asper Centre in the intervention into *Canada v Zajicek* and will be our constitutional litigator in residence in 2013-2014.

 **NORTON ROSE FULBRIGHT**

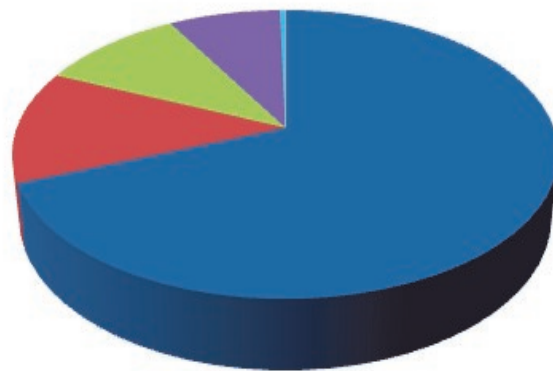
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**A special thank you to Torys LLP for their support of student Leora Jackson to do a public interest placement with the Asper Centre during the summer of 2013.**

## Sources of financial contributions



- David Asper Endowment
- Faculty of Law - general in-kind
- Yaremko Endowment
- Pro Bono contributions
- Government work study grant

# Advisory Group

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**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. Professor Roach's books include *Constitutional Remedies in Canada*, *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice*, *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue*, *September 11: Consequences for Canada* and *The Charter of Rights and Freedoms* 3<sup>rd</sup> ed (with Robert Sharpe). He has written and published over 110 articles and chapters worldwide. He also 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*, *Kopopenace & Spears* appeals, and *Tanudjaja et al.*



**Professor Lorraine Weinrib** is appointed at the Faculty of Law and the Department of Political Science. She is currently studying the legitimacy of the post-WWII model of judicially enforced rights-protection and is working on a monograph entitled *The Supreme Court of Canada in the Age of Rights*. Her additional publications advocate the institutional coherence of the *Charter*, provide interpretation of sections 1 and 33, address theoretical dimension of the Supreme Court's *Charter* jurisprudence and contribute an in depth study of leading cases. 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). 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 Assistant 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. She received an Honours B.A. in Political Science at the University of Toronto. In addition, 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. She joined the University of Toronto Faculty of Law in 2009.



**Paul Schabas** is a litigation partner at Blakes in Toronto and an adjunct faculty member at the University of Toronto, Faculty of Law. His practice focuses on complex commercial litigation and arbitrations. Mr. Schabas also has expertise in white collar criminal and regulatory matters, constitutional, media and public law. He is recognized by his peers as a leading counsel, as demonstrated by his election as a fellow of the prestigious American College of Trial Lawyers (2007). He is listed in *The Best Lawyers in Canada 2011* (where he was media lawyer of the year in 2010) in the areas of corporate and commercial litigation, criminal defence, administrative and public law, and defamation and media law. Landmark constitutional cases argued by Mr. Schabas include *R v Morgentaler*, *Smoling and Scott, Canada (Human Rights Commission) v Taylor*, and *Canadian Foundation for Children, Youth and the Law v Canada*.

# Dedicated People

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.

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