Charter: A Course

A podcast about Canadian Constitutional Law & Litigation

Episode 4: Religious Freedom & Interventions in Constitutional Litigation

About the Series

Charter: A Course is a podcast created by the David Asper Centre for Constitutional Rights (the Asper Centre and hosted by the Asper Centre's Executive Director Cheryl Milne.

Charter: A Course focuses on Canadian constitutional law and litigation. In each episode, we highlight the accomplishments of U of T Law's faculty and alumni involved in leading constitutional cases and issues. Each episode also includes a "Practice Corner", where we talk about the ins and outs of what it means to be a constitutional litigator.

Whether you are a law student, a lawyer, or just an interested person, we hope that you learn about an aspect of constitutional law and litigation that interests you in our podcast.

Show Notes

This episode focuses on freedom of religion and the role of interveners in landmark cases concerning religious freedom.

Section 2 of the Charter sets out that everyone has four fundamental freedoms, one of which is freedom of conscience and religion in clause 2(a). In this episode, we learn about the different ways in which the court has viewed freedom of religion in the past and the implications of those different views, from University of Calgary Professor Howard Kislowicz. We also hear from Howie about the extent to which interveners can be said to have improved the quality of court decisions, concerning freedom of religion, and the extent to which interveners can be said to have promoted the legitimacy and acceptability of those decisions.

In this episode's Practice Corner, we talk about the process and practice of intervening in appeals at the Supreme Court of Canada with lawyer, Adriel Weaver.

Find a full transcript of this episode here.

Time Markers

Due to the extended length of this episode (the content was too compelling to cut down!) we're happy to include the following "time markers" to allow the listener to easily find specific segments of the conversation:

At **3:13**, Howie and Cheryl discuss Howie's musical endeavours including how he created the theme song to our podcast, Charter: A Course.

At **7:59**, Howie's discussion about Freedom of Religion cases begins:

At **12:41** the cross-cultural communication aspect in these cases is discussed

At **15:50** the *Multani* case

At **18:05** the *Amselem* case

At **21:53** the *Hutterian Brethren* case

At **36:20** the *Ktunaxa Nation* case

At **46:09** discussion about Howie's research on the impact of interveners in religious freedom cases

At **59:13** "Practice Corner" segment with Adriel Weaver on the practice and process of interventions in constitutional litigation begins:

At **59:59** the *Trinity Western* cases

At **1:09:48** the purpose of interveners; written vs oral submissions

At **1:12:37** the *Sharma* case; trial level vs appellate court interventions

At **1:15:41** key practice tips essential to a good intervention

At **1:17:20** Asper Centre intervention in the *Bedford* case

At **1:19:55** Intervention by EGALE in *Egan* case

At **1:21:45** the 10-page factum and 5-minute submissions by interveners

Case Links

In this episode, the following cases were discussed:

Trinity Western University v Law Society of Upper Canada, 2018 SCC 33 (CanLII)
Multani v Commission scolaire Marguerite-Bourgeoys, 2006 SCC 6 (CanLII)
Syndicat Northcrest v Amselem, 2004 SCC 47 (CanLII)
Alberta v Hutterian Brethren of Wilson Colony, 2009 SCC 37 (CanLII)
Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations), 2017 SCC 54 (CanLII)
R v Oakes, 1986 CanLII 46 (SCC)
R v Sharma, 2020 ONCA 478 (CanLII)
Canada (Attorney General) v Bedford, 2013 SCC 72 (CanLII)
Egan v Canada, 1995 CanLII 98 (SCC)

About the Asper Centre

The Asper Centre, a part of the University of Toronto's Faculty of Law since 2008, is devoted to realizing constitutional rights through advocacy, research and education. 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. The Centre was established through a generous gift from U of T law alumnus David Asper (LLM '07).

Thank You's

Charter: A Course is proudly sponsored by the University of Toronto's affinity partners: **MBNA** and **TD Insurance**. We would like to thank each of our sponsors, and you can discover the benefits of affinity products here.

We would like to thank the creators of our theme music for Charter: A Course. Constitutional law professor Howie Kislowicz and law professor Rob Currie gave us the licence to use their constitutional law shanty in exchange for a donation to the Calgary Food Bank. The song's performers are: Vanessa Carroll, Rob Currie, Howie Kislowicz, Avinash Kowshik, Anna Lund, Patricia Paradis, Elin Sigurdson, Lyle Skinner, and Dave Wright. You can listen to the entire shanty here: Charter a Course. Please consider contributing to your local food bank!

Thank you to Szymon Rodomar and Flint Patterson, JD students at the U of T Faculty of Law, for their immense contributions to the production of this episode.

Thank you to our wonderful guests on this episode, Howie Kislowicz and Adriel Weaver! Thank you to our audio editor Liam Morrison of Bell Room Media Solutions.

Lastly, we are very grateful to you, our listeners, for taking the time to join us on this voyage as we charter a course into podcasting!