



CLAIHR

**Canadian Lawyers for International Human Rights
Juristes canadiens pour les droits internationaux de la personne**

ANNUAL REPORT
2023

About CLAIHR

CLAIHR is a non-governmental organization of lawyers, law students, legal academics, and other jurists, founded in 1992 to promote international human rights from a Canadian perspective through education, research, and advocacy. We are committed to advocating for and defending fundamental human rights as enshrined in the Universal Declaration of Human Rights and other international and domestic human rights instruments.

CLAIHR's Board of Directors

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CLAIHR thanks pro bono counsel [Steven Blakey](#), [Mark Iyengar](#), [Rebecca Jones](#), [Mae Nam](#), [Susanna Quail](#), [Nicolas Rouleau](#), [Vibhu Sharma](#), and [Lorne Waldman](#).

CLAIHR thanks advocacy partners [the British Columbia Civil Liberties Association](#), [the Canadian Association of Refugee Lawyers](#), [the Canadian Civil Liberties Association](#), [the Canadian Immigration Lawyers Association](#), [the Canadian Centre for Victims of Torture](#), [Disability Alliance BC](#), [the Human Rights Research and Education Centre at the University of Ottawa](#), [the International Human Rights Program at the University of Toronto Faculty of Law](#), and [the Instituto Internacional de Responsabilidad Social y Derechos Humanos](#).

CLAIHR thanks volunteers [Jeremy Greenberg](#), [Jonathan Laxer](#), [Sevda Mansour](#), [Henry Off](#), [Stevi Papadopoulos](#), [Susanna Quail](#), [Tamara Ramusovic](#), [Karen Segal](#), and [Joy Wahba](#) for their invaluable contributions this year.

Message from the President

It is a troubling time for human rights.

The year 2023 was punctuated by the horrific suffering we have seen Israel inflict on Gazans in reaction to the terror attacks of October 7. Canada and its western allies, which had responded so forcefully to the human rights violations of major geopolitical rivals – notably Russia’s invasion of Ukraine and China’s repression of Uyghurs – suddenly fell silent. China and Russia have gleefully (and rightfully) denounced the hypocrisy of the US, Canada, and other western countries, scoring diplomatic points in much of the Global South. And so the rules-based international order continued to erode in 2023.



What is more, in an atmosphere of hysteria strongly echoing the one that prevailed after the terror attacks of September 11, 2001, human rights advocates in Canada have come under fierce attack for speaking out for the international human rights Palestinian civilians. We have seen politicians, students, and workers viciously attacked for their views by institutions of power such as university administrations, the police, and legislatures. And as is so often the case, there’s been a clear pattern of predominantly women or racialized people bearing the brunt of this bullying. And all this has taken place in an environment of rising antisemitism, Islamophobia, and anti-Palestinian racism.

Meanwhile, as the crisis in Gaza dominates the attention of western audiences, not to be forgotten are the other pressing human rights situations that continue unabated. We are seeing troubling events unfolding in places like Sudan, eastern DRC, and Artsakh. All the while the unrelenting march of the global threats posed by the climate crisis continues apace.

However it is precisely in moments when human rights are least respected, and human rights advocates most persecuted, that it is most important to step forward and be one. CLAIHR is determined to continue advocating for the human rights of the most marginalized among us. We gratefully acknowledge the contributions and support we’ve received in this regard from our volunteers, community partners, *pro bono* counsel, student chapters, and Advisory Board. I look forward to continuing to lead CLAIHR as Board President during these interesting and eventful times and I am excited to see what we will achieve together.

A handwritten signature in black ink, appearing to read 'James Yap'.

James Yap
President

Committee Reports

Advocacy Committee

Chair: Ankita Gupta

Advancing international human rights law through strategic litigation and policy reform is one of CLAIHR's highest priorities as an organization. CLAIHR's Advocacy Committee coordinates our legal and policy advocacy projects. This work includes making intervener submissions in court cases, issuing public statements, and filing submissions with government agencies conducting policy consultations.

Submission to the UN Human Rights Council's Universal Periodic Review (UPR) for Canada

Every 4.5 years, each UN Member State undergoes a peer review of its human rights records. In August 2023, Canada had its 4th review. CLAIHR prepared submissions that focused on five areas: (1) Canada's ratification of human rights instruments; (2) corporate accountability mechanisms; (3) mental health detention system; (4) notwithstanding clause; and (5) contributions to climate change.

CLAIHR called on Canada to become a party to the International Convention for the Protection of All Persons from Enforced Disappearance, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Optional Protocols to the Convention Against Torture, Optional Protocol to the International Covenant for Economic, Social and Cultural Rights, and Optional Protocol on the Convention on the Rights of the Child, and accept individual communications under the International Convention on the Elimination of all forms of Racial Discrimination. CLAIHR also called on Canada to uphold its commitments to reconciliation with Indigenous Peoples, including by adopting the international human rights calls to action emerging from Canada's Truth and Reconciliation Commission's Calls to Action and the National Inquiry into Missing and Murdered Indigenous Women and Girls.

CLAIHR also called on Canada to take steps to regulate corporations and provide effective remedies for victims of corporate human rights abuses by:

- adopting binding measures to ensure that Canadian corporations do not violate human rights in their operations outside of Canada and exercise human rights due diligence;
- making access to public support conditional on businesses preventing negative impacts on human rights in their overseas operations, and withdrawing support if the company fails to do so;
- investigating credible allegations of human rights violations and prosecuting cases; passing legislation recognizing a civil cause of action based on human rights law, affirming parent

company liability, and ensuring that Canadian courts provide a venue for cases brought against Canadian corporations;

- ensuring that impecunious victims can bring actions without posting a bond for costs and paying the defendant's fees; and
- making legal aid available to individuals who want to bring civil actions.

On mental health detention, CLAIHR called on Canada to withdraw its declaration and reservation to article 12(4) on the Convention on the Rights of Persons with Disabilities and ensure domestic legislation that allows for the deprivation of legal capacity of persons with disabilities complies with the Convention.

CLAIHR also raised concerns about the use of the notwithstanding clause in section 33 of the Canadian Charter of Rights and Freedom to enact legislation that violates Canada's human rights. CLAIHR called on Canada to amend its constitution to repeal the notwithstanding clause and take steps to limit the use of the clause including by passing legislation explicitly prohibiting the clause's use in any way that violates Canada's international human rights obligations.

Climate change poses significant risks to the enjoyment of human rights, including the right to life, adequate food and housing, health, water, and culture. CLAIHR called on Canada to phase out fossil fuels immediately and increase public finance for clean energy, including by:

- implementing its commitment to end direct international public finance for fossil fuels, without loopholes or false solutions like carbon capture and storage and blue hydrogen;
- ending domestic public finance and subsidies for fossil fuels, without loopholes for false solutions;
- increasing its climate finance in line with its fair share and historic responsibility; and
- promoting inclusive, participatory, rights-based, and gender-just finance and provide finance in the form of grants, not loans.

CLAIHR called on Canada to ensure its climate policies center communities.

Thematic Hearing at the Inter-American Commission for Human Rights on the Deportation of Long-Term Permanent Residents due to Criminality

Canada's immigration scheme allows the removal from the country of a non-citizen who has been convicted of a criminal offence carrying a maximum sentence of ten years or more – even if the actual sentence imposed is far shorter, such as six months or even less. This process is near-automatic once a conviction occurs. Many people deported under this law are permanent residents who, despite never having acquired citizenship, have lived in Canada nearly their entire lives and know no other country. Thus, after serving the sentence imposed on them by the court, they are

subjected to the additional penalty of being removed to a country to which they may have barely any connection.

CLAIHR, along with several other Canadian NGOs and lawyers from Waldman and Associates, requested and were granted a thematic hearing at the Inter-American Commission on Human Rights (IACHR) to address this issue. In October, representatives from CLAIHR and other colleagues attended a hearing at the IACHR in DC to present its case to the Commission and representatives from the Canadian government. The Commission committed to examining the issue and communicating its findings.



(Left to Right) Juan Ignacio Rodriguez (IIRESODH), CLAIHR Board Member Lindsay Bailey, IACHR Commissioner José Luis Caballero, IACHR Vice-President Esmeralda Arosemena de Troitiño, CLAIHR President James Yap, and lawyer Steven Blakey at the IACHR thematic hearing on deportations of long-term permanent residents for criminality on November 7, 2023.

Involuntary treatment and/or detention of people with mental health disabilities: *Corless v. Fraser Health Authority*

Counsel: Mark Iyengar of [Peck and Company](#)

International human rights law affords extensive protections to people with mental health disabilities. However, laws in Canada are substantially out of step with these international standards, notably as enshrined under the *Convention on the Rights of People with Disabilities (CRPD)*. Specifically, laws grant courts and/or government agencies broad powers to order the involuntary treatment and/or detention of people with mental health disabilities, in a way that far exceeds what is permitted under the *CRPD*.

BC's *Adult Guardianship Act* empowers certain government agencies to apply for a court order providing for involuntary treatment and/or hospitalization of an individual who is deemed to be abused or neglected and unable to seek support or assistance due to an illness or condition, but who would nevertheless benefit from support or assistance. The order lasts for one year and can be renewed for a further term of one year, but the legislation contains no provision for it to be renewed beyond this two-year term, presumably to place an upper limit on the severe violation of an individual's personal liberty and security that this entails.

In *Corless v. Fraser Health Authority*, however, the British Columbia Provincial Court (BCPC) found that an order for involuntary treatment and/or detention can effectively be extended indefinitely. The respondent was held at a long-term care facility under an order under the *Adult Guardianship Act*. After the two-year term of the Order expired, however, the BCPC ruled that the Fraser Health Authority could apply for an order *de novo* under the *Adult Guardianship Act*, without any significant change in the respondent's circumstances, effectively allowing her detention to be extended indefinitely.

CLAIHR, jointly with [Disability Alliance BC](#), intervened to argue that the interpretation of the *Adult Guardianship Act* adopted by the BCPC is inconsistent with Canada's international human rights obligations. Notably, the BCPC's reasoning is premised on the assumption that coercive measures must always be available for people with mental health disabilities, whereas the *CRPD* is clear that coercive measures must always be exceptional. The BCPC's interpretation therefore cannot be allowed to stand, as it is well established that legislation must always be interpreted in a manner that is consistent with Canada's international human rights obligations.

Canada's International Commitment to Refugees: *Canadian Council for Refugees v Canada (Safe Third Country Act)*

Counsel: Lorne Waldman, Audrey Macklin, and Steven Blakey

CLAIHR and the [Canadian Centre for Victims of Torture](#) were granted leave to intervene before the Supreme Court of Canada in a case concerning the constitutionality of the 'Safe Third Country Agreement', an agreement that designates the United States as a 'safe' country for refugees. As a result of this designation, almost all refugees who enter Canada over land from the United States are deemed ineligible to make a refugee claim and are subject to deportation and imprisonment in the United States. In addition, there are also significant barriers to individuals pursuing refugee protection in the United States, making it more likely that refugee claimants will be denied protection in the US and deported to persecution and/or death.

The Federal Court found that the Safe Third Country Agreement unjustifiably infringed the right to life, liberty and security of the person as protected under s. 7 of the Charter. The Federal Court of Appeal overturned that ruling, and the case was heard by the Supreme Court of Canada in Fall 2022.

CLAIHR's submissions focused on how the implementation and ongoing application of the Safe Third Country Agreement between Canada and the United States violates the Canadian Charter of Rights and Freedoms and Canada's obligations under international treaties and conventions to which Canada is a signatory.

In June, the Supreme Court released its decision in the case. The Supreme Court found that the STCA does not violate s. 7 of the Charter. Although the Court also sent the question of whether the STCA violates s. 15 of the Charter back to the Federal Court, leaving open the possibility that it may be declared unconstitutional, CLAIHR is disappointed in the Supreme Court's decision.

The Human Right to Climate Change Mitigation: *Mathur v. Ontario*

Counsel: Nicolas M. Rouleau & Vibhu Sharma

The *Cap and Trade Cancellation Act (CTCA)* was enacted by the province of Ontario in 2018. It repealed the *Climate Change Mitigation and Low-carbon Economy Act*, which had set out an emission reduction target of 37% below 2005 levels by 2030 in the province. In the *CTCA*, Ontario implemented a revised target of 30% emissions reduction below 2005 levels by 2030.

Ecojustice assisted seven youth environmental activists in filing an application against Ontario contesting the constitutionality of the *CTCA*. The Applicants assert that the revised target violated the rights of Ontario youth and future generations as protected by sections 7 and 15 of the Canadian Charter of Rights and Freedoms by failing to adequately address the risks associated with climate change. The Applicants seek a declaration that the revised target is unconstitutional and an order compelling Ontario to establish a revised emissions target consistent with Ontario's commitments under the Paris Agreement.

On April 15, 2020, Ontario filed a motion seeking the dismissal of the case on the basis that the claim was not justiciable. Justice Brown denied the motion.

In September 2022, the lawsuit proceeded to a hearing on its merits. Justice Vermette found that although the Applicants' claim was justiciable, there was no violation of the Applicants' sections 7 and 15 Charter rights. The Applicants have appealed to the Court of Appeal for Ontario.

CLAIHR, jointly with the Center for International Environmental Law, is intervening to make three primary submissions. First, as repeatedly confirmed by the Supreme Court of Canada, international law (including international environmental law) should inform the interpretation of the content of Charter rights, including what constitutes state action depriving life and security of the person under s. 7 of the Charter. Second, given Canada's international law obligations and commitments, Ontario's setting of a GHG reduction target constitutes state action that, if inadequate, may deprive life and security of the person under s. 7 of the Charter. Third, in assessing whether a deprivation of s. 7 rights caused by the setting of an inadequate GHG reduction target is so grossly disproportionate as to violate the principles of fundamental justice, the court must consider the impacts of that deprivation on the rights of youth and future generations, consistent with the principle of intergenerational equity in international law.

Education Committee

Chair: Isabel Dávila Pereira

CLAIHR's Education Committee is responsible for organizing and promoting educational events and discussions, as well as building CLAIHR's relationships with stakeholders to advance public education on international human rights.

VISIONING

This year, CLAIHR has sought to advance the organizational strategies developed in 2022. This included the Education Committee carrying out meetings to apply priorities and establish relationships with stakeholders that it would centre in its activities.

STUDENTS

A key challenge identified in 2023 is the lack of established relationships with student chapters due to the variability in recruitment and stability of such chapters. As a result, for 2024, the Education Committee has decided to take the following steps to address such challenges:

1. Establish relationships with other student groups with focuses related to CLAIHR's mission and vision.
2. Establish relationships with other international human rights education groups and organizations, particularly those located at law schools.
3. Focus on public legal education events targeted at different stakeholders, including the professional legal community including, human rights, criminal and civil law practitioners, law professors, judges and courts, students and aspiring lawyers, and, civil society carrying out human rights work.

Where CLAIHR does not have a student chapter, CLAIHR is nonetheless connected to law schools through its Advisory Board, which includes members affiliated with the law schools at Osgoode Hall Law School, the University of Calgary, the University of Toronto, and the University of Windsor.

EVENTS

Each year, CLAIHR typically hosts various events on international human rights topics of interest to Canadian lawyers. These events often qualify as continuing legal education programming. Previously, CLAIHR has worked with [law firms](#), the [Law Society of Ontario](#), and even [Nightwood Theatre](#) on these events.

This year, CLAIHR hosted one key event which represented a milestone to establish long-term relationships with partners in the international human rights sphere.

International Human Rights Workshop: Supporting Domestic Advocacy

In October, CLAIHR co-hosted a workshop with the International Human Rights Program at the University of Toronto's Faculty of Law (IHRP) and the International Institute for Social Accountability and Human Rights (IRESODH). The workshop, led by Former Assistant Secretary to the Inter-American Court of Human Rights and former member of the United Nations Human Rights Committee, Victor Rodríguez Rescia, focused on the tools and processes available in the international human rights law system—chiefly the United Nations system and the Inter-American system—and how they can be used in aid of human rights litigation in Canadian courts.



Victor Rodríguez Rescia presenting at the workshop at the University of Toronto's Faculty of Law.

Financial Statements

Canadian Lawyers for International Human Rights

Unaudited Balance Sheet

(as of March 31 2023, in Canadian Dollars)

| | 31-Mar <u>2023</u> | 31-Mar <u>2022</u> | 31-Mar <u>2021</u> |
|--|-----------------------|-----------------------|-----------------------|
| Assets | | | |
| Cash | 3,849 | 4,086 | 2,770 |
| Holdbacks Recoverable | | | |
| Other Receivables | | | 58 |
| Prepaid amounts | 0 | 0 | 0 |
| Total Assets | 3,849 | 4,086 | 2,828 |
| Liabilities | | | |
| Accounts Payable | 0 | 0 | 0 |
| Unearned Revenue | 0 | 0 | 0 |
| GST Recoverable | 0 | 0 | 0 |
| Total Liabilities | 0 | 0 | 0 |
| Retained Earnings | 3,849 | 4,086 | 2,828 |
| Total Liabilities and Retained Earnings | 3,849 | 4,086 | 2,828 |

Canadian Lawyers for International Human Rights

Unaudited Income Statement

(for period ended March 31, 2023, in Canadian Dollars)

| | 31-Mar <u>2023</u> | 31-Mar <u>2022</u> | 31-Mar <u>2021</u> |
|------------------------------------|-----------------------|-----------------------|-----------------------|
| Revenue | | | |
| Membership donations | 850 | 1400 | 775 |
| Other donations | 963 | 603 | 5 |
| Total Donations | 1,813 | 2003 | 780 |
| Gross Fundraising | 0 | 1090 | 180 |
| Less: Expenses | | | |
| Net Fundraising Income | 0 | 1090 | 180 |
| Interest Income | 0 | 0 | 0 |
| General Income | 0 | 0 | 0 |
| Total Other Income | 0 | 0 | 0 |
| Total Revenue | 1,813 | 3093 | 960 |
| Expenses | | | |
| Insurance | 1,410 | 1,040 | 1,040 |
| Email/Web | 586 | 461 | 750 |
| General Expenses | 12 | 250 | 0 |
| Transaction Fees | 42 | 84 | 20 |
| Total Expenses | 2,050 | 1,835 | 1,810 |
| Net Income | -237 | 1,258 | -850 |
| Beginning Retained Earnings | 4,086 | 2,828 | 3,679 |
| Ending Retained Earnings | 3,849 | 4,086 | 2,828 |