

**JOURNAL OF PARLIAMENTARY AND POLITICAL LAW**  
**REVUE DE DROIT PARLEMENTAIRE ET POLITIQUE**

Published in Association with the Institute of Parliamentary and Political Law  
Publié en collaboration avec l'Institut de droit parlementaire et politique

---

---

**CARSWELL®**

LITIGATION AND JURISPRUDENCE  
LITIGES ET JURISPRUDENCE

**Analyses of the Insite Judgment**

**Editor's Note:** *On September 30, 2011, the Supreme Court of Canada issued its judgment in the matter of Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44. This judgment is so important and so rich in content that it merits more thorough than usual examination. Toward this goal, the present issue of the JPPL includes commentary by the following eminent scholars:*

- **Ministerial discretion and principles of fundamental justice**  
Hon. Irwin Cotler, M.P., P.C., Ottawa and Charlie Feldman, Montreal
- **Remedies**  
Professor Kent Roach, Faculty of Law, University of Toronto
- **Charter s. 7**  
Heather MacIvor, University of Windsor
- **Inter-jurisdictional immunity**  
Ron Skolrood, Lawson Lundell, Vancouver
- **Public interest**  
Arghavan Gerami, Gerami Law PC, Ottawa

**The Decisive Moment of (In)Decision:  
Insite and Ministerial Discretion**

*Irwin Cotler, M.P., P.C., O.C.  
Charlie Feldman\**

It has been written that “No one today denies the central, indeed, the necessary role played by discretion in the day-to-day functioning of the administrative state”.<sup>1</sup> While the necessity of ministerial discretion goes unquestioned, the review of its

---

\* Irwin Cotler is the Member of Parliament for Mount Royal and the former Minister of Justice and Attorney General of Canada (2004–2006). He holds a B.C.L. from McGill University (1964) and an LL.M. from Yale University (1966), and is the recipient of ten honorary doctorates. Charlie Feldman earned a B.C.L./LL.B. from McGill University in 2011.

<sup>1</sup> Geneviève Cartier, “Keeping a Check on Discretion” in Colleen Flood and Lorne Sossin (eds.), *Administrative Law in Context* (Toronto: Emond Montgomery, 2008) Chapter 10 at 286.

