



2023-2024

Centre for Constitutional Studies Annual Report



CENTRE *for* CONSTITUTIONAL STUDIES
Centre d'études constitutionnelles

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Message from the Director

2023–24 was another busy year at the CCS. We hosted two workshops, published six journal issues, and released 2 new podcast miniseries, among many other things. In these introductory comments, I'll flag just three of these initiatives, which I regard as particularly timely and important, for special attention.

First, we published an open issue of the *Review of Constitutional Studies* that contained three excellent pieces on the SCC's then-undecided C-92 case (on Indigenous self-government vis-à-vis child and family services). Two of these pieces were subsequently cited in the Court's landmark decision, which affirmed federal jurisdiction to give Indigenous child welfare laws the force of federal law. An important judgment, to say the very least.

Second, we published a new special issue of the *Constitutional Forum* on the notwithstanding clause, assembling a collection of papers that bring genuinely new ideas to the table on the clause's place within the Constitution and the Charter. With multiple section 33 cases now before the courts, and with the public controversy over section 33 still raging, the publication of these new perspectives could hardly be more timely.

Finally, in January 2024, we collaborated with two professors at UBC's Allard School of Law to organize a workshop on the future of the Supreme Court's jurisprudence on the "horizontal effect" of Charter rights, i.e. the extent to which they place duties on private parties as well as government. Once again, this initiative aims to add new voices and new theories to a conversation that is now before the courts, especially in the case of *Cool World v Twitter*, a case about whether the Charter obliges courts to develop the common law to narrow Twitter's power to censor political speech.

These various initiatives reveal a Centre that is sitting at the cutting edge, contributing to active, fizzing public debates and providing resources (and in particular scholarship) that can help members of the legal community figure out how to intervene in these debates when they are channeled into legal disputes. Our goal is to continue this work in the year ahead, and to continue thinking about how we can best serve the legal and academic communities in which we're embedded.

Richard Mailey
CCS Director



About Us

The Centre for Constitutional Studies is unique as the hub for constitutional research and public education in Canada. It connects leading Canadian and international scholars, contributes to constitutional debate, creates accessible educational resources, and connects constitutional experts with the public.

Centre for Constitutional Studies Staff:

Richard Mailey, **Director**

Aubrey Abaya, **Public Legal Education Coordinator**

Julie Nguyen, **Administrator**

Year at a glance: 2023-2024

223,826 website
page views

2 issues of Review
of Constitutional
Studies

2 academic
workshops

14 events
1,026 attendees

2 new podcast series;
11 episodes released

4 issues of
Constitutional
Forum

Public Events

Event	Speaker(s)	Date
The New Corporation: Film Screening & Q&A w/ Director/Prof Joel Bakan	Joel Bakan	April 24, 2023
What Oakes Could Have Said: Or How Else to Read a Limitations Clause	- Gregoire Webber - Malcolm Lavoie (moderator)	September 28, 2023
Why the Notwithstanding Clause? Putting the Charter's Controversial Provision in Context	Rob de Luca	October 11, 2023
"17 Going on 23": Sentencing Children to Life in Canada	Debra Parkes	October 27, 2023
Pragmatism and the Law	Cheryl Misak	November 15, 2023
The Prophecies of What Courts Will Do in Fact: The Concept of Law & the American Realists	Luca Malagoli	November 29, 2023

Event	Speaker(s)	Date
Federalism and the Environment: Judicial Dialogue	- Justice Grant Huscroft - Justice Kevin Feehan - Malcolm Lavoie	January 25, 2024
Bringing the Law to Life: Keynote & Reception w/ Justice Sheilah Martin	- Justice Sheilah Martin - Eric Adams (interviewer)	February 9, 2024
The Normative Fine Structure of the Judge's Chain Novel	Robert Brandom	February 14, 2024
Dancing Around the Table: Film Screen & Panel Discussion	- Matt Wildcat - Shalene Jobin - Sarah Nickel - Emma Feltes	March 8, 2024
Trans Rights in Alberta: Implications of the Government's Proposed Policies	- Florence Ashley - Rachel Loewen Walker - Cheryl Milne	March 11, 2024
Provincial Constitutions & Unilateral Amendments: An Analysis of Quebec's Bill 96	Emmett Macfarlane	March 13, 2024

Event	Speaker(s)	Date
A Framework for Reconciliation: Bill C-92 at the Supreme Court (w/ WLGL)	• Naomi Metallic • Joshua Nichols • Katherine Hensel • Earl Stevenson	• March 15, 2024

34th Annual McDonald Lecture

Nationalism Under Scrutiny: The Promises of Liberal Nationalism and Multinational Federalism

Professor Alain-G Gagnon
January 11, 2024

Abstract:

Several of the main authors that study the national phenomenon converge on a famous dictum made by Ernest Gellner in the opening statement of his book on Nations and Nationalism to the effect that "Nationalism is primarily a political principle, which holds that the political and national unit should be congruent." This point raises immediately a series of questions pertaining to state sovereignty and territorial integrity as two central pillars of the continuing existence of the nation-state.

Nationalism has become the most frequent expression of claims for political autonomy and self-realization in the modern world. It is significant to note that in territories as diverse as Canada and Spain, for example, nationalism has constituted simultaneously the struggle against a domineering view of the state imposed by central institutions and the attempt to establish democratic practices.

Any study of the phenomenon of nationalism should point out to an impressive capacity to renew itself through transformative myths, narratives, normative arguments and, more concretely, through a variety of political actions. In this presentation, Professor Alain-G Gagnon intends to focus mainly on the promises of liberal nationalism and multinational federalism as concrete expressions of a renewed desire to build a common future in complex political settings.

Conferences & Workshops

Horizontality and the *Charter* Workshop

In January 2024, the Centre hosted a workshop on the horizontal effect of Charter rights at UBC's Allard School of Law, working in collaboration with UBC professors Margot Young and Joel Bakan. The workshop addressed some of the key issues surrounding the case of *Cool World v Twitter*, which involves a PR firm contesting Twitter's refusal to run paid ads for a documentary (The New Corporation) by arguing that Twitter's common law rights should be interpreted in a way that's consistent with the Charter value of free expression. Some of the papers presented at the workshop addressed *Cool World* directly, while others engaged more generally with legal and theoretical questions about the manner in which constitutional rights should apply to private legal relations (i.e. the way in which they apply horizontally, between individuals, rather than vertically, between an individual and government).

The main output from the workshop will be a special issue of the *Constitutional Forum*, which will bring together revised versions of papers presented at the workshop, as well as papers inspired by workshop discussions. This issue is scheduled for publication in Spring 2025 and will include a piece by Joel Bakan and Sujit Choudhry (co-counsel for *Cool World* in the case mentioned above).

January 20, 2024

Organized in Collaboration with:

Margot Young

Professor of Law, Allard School of Law (UBC)

Joel Bakan

Professor of Law, Allard School of Law (UBC)

Conferences & Workshops

Responsive Judicial Review Workshop



**CONTRÔLE
JUDICIAIRE ADAPTÉ**

UN ATELIER D'UNE JOURNÉE
PORTANT SUR
L'IMPORTANTE NOUVELLE
MONOGRAPHIE DE LA
PROFESSEURE ROSALIND DIXON

CONFÉRENCIERS:

JEAN-CHRISTOPHE BEDARD RUBIN
ROSALIND DIXON
STEPHEN GARDBAUM
VANESSA MACDONNELL
RICHARD MAILEY
CARISSIMA MATHEN
MARION SANDILANDS
GEOFFREY SIGALET

**1 MARS 2024
12H À 18H**

PIÈCE 202 DU PAVILLON FAUTEUX
UNIVERSITÉ D'OTTAWA


 Université d'Ottawa
CENTRE DE DROIT PUBLIC
PUBLIC LAW CENTRE
 University of Ottawa


CENTRE for CONSTITUTIONAL STUDIES
Centre d'études constitutionnelles

This workshop took place at the University of Ottawa, bringing together a small group of constitutional experts to discuss Prof Rosalind Dixon's landmark monograph, *Responsive Judicial Review (RJR)*. It aimed to bring the theory articulated in *RJR* to bear on current constitutional issues facing Canadians, including how courts should respond to the uptick in provincial recourse to the notwithstanding clause, and the role of unwritten constitutional principles in judicial decision-making.

March 1, 2024

Organized in Collaboration with:

Vanessa MacDonnell

University of Ottawa, Faculty of Law;

and the University of Ottawa's Public Law Centre

Journals

Review of Constitutional Studies

Vol. 27.2 (Open Issue)

Vol. 28.1 (Special Issue)

Legacies of Patriation

Vol. 32.1 (Open Issue)

Vol. 32.2 (Special Issue)

Legacies of Patriation

Vol. 32.3 (Special Issue)

The Notwithstanding Clause

Vol. 32.4 (Special Issue)

Constitutional Crossroads

Constitutional Forum

Total hits for both
journals

176,000

Total article
downloads for
both journals

29,000

Podcasts



7 Episodes

Extremism, Polarization, and the Future of Democracy is a podcast mini-series focused on the changing dynamic of public discourse and its implications for democratic politics. The series is based on a third-year undergraduate course in the Department of Political Studies at Queen's University that offered an intimate look at the twin phenomena of political extremism and polarization. The series connects with a range of academics, advocates, filmmakers, and journalists to tackle extremism and polarization from different vantage points. Listeners will learn about contemporary extremist movements and how they're rebranding themselves in the digital era, the problems of regulating online expression, how to address polarization and engage with potentially dangerous ideas, and much more.



4 Episodes

While the overturning of *Roe v Wade* in the US didn't alter the legal or constitutional status of abortion in Canada, it did lead Canadians to wonder about the long-term security of their reproductive rights. Could the same thing happen here?

In this 4-part podcast series produced by summer students at the Centre for Constitutional Studies, legal and constitutional experts address this question by providing insights on the constitutional implications of abortion regulation in Canada. The series tells the stories of how the Supreme Court of Canada effectively decriminalized abortion; how the federal and provincial governments responded post-decriminalization; and how the debates surrounding abortion regulation and its constitutional implications have evolved in recent years.

Advisory Board

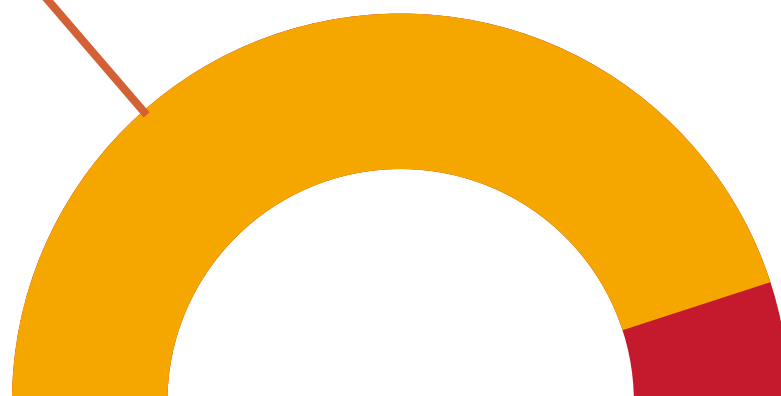
The Centre is grateful for the continued guidance and dedication of our Advisory Board, which currently comprises 11 members, including 3 members of the U of A faculty of law, 1 member of the political science department (U of A arts faculty), 1 member of the U of A faculty of education, and one member of the faculty of native studies. Other members represent a spectrum of professions across the legal and academic communities in Alberta (judges, lawyers, administrators).

This year the Board said goodbye to: Professor and Vice Chair Jared Wesley (U of A, political science), Justice Tom Rothwell, and Professor Malcolm Lavoie (U of A, law). The Board was delighted, however, to welcome three new members: Professor Jessica Eisen (U of A, law), Professor Matt Wildcat (U of A, native studies), and Krishen Singh.

Funding

Alberta Law Foundation

\$376,089



Publications

\$8,952