

# ANNUAL REPORT 2019-2020

Fiscal Year Ending March 31, 2020



CENTRE *for* CONSTITUTIONAL STUDIES  
*Centre d'études constitutionnelles*

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## **ABOUT THE CENTRE FOR CONSTITUTIONAL STUDIES**

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.

In addition to hosting national conferences and symposia, the Centre reaches out to the public with a variety of speakers at the University and in the community. It engages in public education and provides well-researched and accessible information on the Constitution through articles on its website and through a variety of projects and events. The Centre publishes a scholarly journal, *Review of Constitutional Studies*, and an online journal, *Constitutional Forum*, designed to encourage constitutional dialogue and debate across the country and elsewhere. The Centre works to bring the Constitution to light for Canadians so that they understand its fundamental importance to the democratic workings of our country.

### Objectives

- To undertake, facilitate, and encourage multidisciplinary, interdisciplinary, and cross-sector research about constitutional issues;
- To facilitate the production of high-quality publications for scholars, the legal community, and the public;
- To promote an understanding and appreciation of constitutional issues among the public, private, and not-for-profit sectors; and
- To serve as a resource for information and expertise about constitutional issues.

## **ACCOUNTABILITY AND FUNDING**

The Centre for Constitutional Studies is an academic center established at the University of Alberta and is accountable to the University through the Dean of the Faculty of Law. The Centre is generously funded by the Alberta Law Foundation (ALF) through an annual operating grant (\$394,616.00 in 2019-20) and by the University of Alberta (in kind). In 2019-20, additional sources of revenue for the Centre included subscription revenue from subscribers to the *Review of Constitutional Studies* and royalty revenues from published articles (\$11,535.00), and specific project funding from ALF for website re-development (\$9,000.00).

## THE CENTRE'S ACTIVITIES IN 2019-20



**18,170 Users; 51,313 Page Views**



**236 New Followers**



**7 New Videos; 5.1K Views; 58 New Subscribers**



**9 Presentations to 188 U-School Students**



**1 McDonald Lecture, 180 Attendees**



**3 Speaker events, 171 Attendees**



**7 Downtown *Charter* Series Presentations, 314 Attendees**



**2 Journals: 4 issues, 21 articles**



**25 Plain Language Articles by Summer Students**

## RESEARCH IN 2019-20

### Centre Journal: *Review of Constitutional Studies*



The Centre published two issues of the Review - 23.2 and 24.1 - one of which was a special issue (24.1) titled “Treaty Federalism”. Issue 23.2, was published in October 2019 and includes articles on reconciliation, Section 16 of the Constitution Act, 1982, federalism, constitutional dialogue, a review essay, and a book review. Issue 24.1 was published in late December 2019, and the Centre was fortunate to have two special guest editors, Assistant Professor Joshua Nichols, University of Alberta, and Amy Swiffen, Associate Professor, Concordia University. The papers in this issue, which were delivered at a Workshop held at the University of Alberta in May 2019, explore ‘treaty federalism’ which is a re-imagining of what we understand as sovereignty and the foundation of the Canadian State. See Appendices A and B for the Table of Contents of these issues.

### Centre Journal: *Constitutional Forum*



The Centre published three issues of the Forum, in 2019-2020. Issue 28.3 is a General Issue published in early September 2019, which includes articles written by Philippe Lagassé, David Robitaille, Mark Mancini, and Han-Ru Zhou. Issue 28.4 was published in late October 2019 as a Special Issue with three articles written on the notwithstanding clause. Issue 29.1 included articles written by Colin Feasby, Andrew Leach and Eric M. Adams, Richard Moon, and Maxime St-Hilaire and Xavier Focroulle Ménard. See Appendices C, D, and E for Table of Contents for these issues.

## PUBLIC LEGAL EDUCATION 2019-20

The Centre’s public education program included a wide range of speakers and events: a rich Speaker Series with speakers from across Canada, the Downtown *Charter* Series presentations offered by Law Faculty members; Constitution workshops for grades 5/6 students delivered by law student volunteers; 25 published plain language articles (featuring articles on constitutional issues, commentary on key Supreme Court of Canada judgments, and keyword explanations) written by law students; the development of a grade 9 *Charter* workshop.

### Website Re-design Project

The Centre has been hard at work preparing for the launch of our new website. We expect to launch our new website in early May 2020.

### Speakers

The Centre organizes speaker events where scholars, practitioners and other experts speak to a general audience about constitutional issues. Our audiences range from students, to policy experts,

members of the public including the media and legal practitioners who can benefit from the information provided. In 2019-20 the Centre hosted:

**The Administered Constitution: Administrative Tribunals'/Agencies' Critical Constitutional Role**, co-hosted with the Faculty of Law, a presentation by Professor Sophia Lee (University of Pennsylvania Law School) September 18, 2019



**Courts Without Cases: The Law and Politics of Advisory Opinions** a presentation by Professor Carissima Mathen (University of Ottawa Faculty of Law) October 24, 2019



**Constitutional Amendments: Making, Breaking, and Changing Constitutions** a presentation by Professor Richard Albert (University of Texas, Law, Government) October 31, 2019

*Photos: (top right) Patricia Paradis, Sophia Lee, and Mathew Leowans; (centre) Carissima Mathen; (bottom right) Richard Albert*

## McDonald Lecture in Constitutional Studies

Each year the Centre organizes and hosts the McDonald Lecture in Constitutional Studies which is supported through an endowment provided by the McDonald family to the Faculty of Law in honour of the late Justice David McDonald of the Court of Appeal of Alberta. This year's event marked the 30<sup>th</sup> anniversary of the lecture and the Centre was pleased to host Senator Paula Simons as our guest lecturer. The Senator gave a compelling and informative presentation on the history of the Senate and the ways in which appointment of independent senators has transformed the Senate's day-to-day functions.



*Photo: Interim Dean David Percy, Senator Paula Simons, Patricia Paradis*

## Downtown Charter Series

The Centre organized seven sessions taught by University of Alberta law professors at Enterprise Square in downtown Edmonton. The Downtown *Charter* Series talks are an excellent opportunity for members of the public to learn about the *Charter* during their lunch hours. This is an incredibly popular series. Topics covered this past year:

- Protecting Democracy or Those Boring Parts of the *Charter* no one Talks About! A presentation by Professor James Muir
- Is the *Charter* Protection of the Right to Counsel Too Limited? A presentation by Public Legal Education Coordinator Paul Atkinson
- Does the *Charter* Protect the Right to Housing? A presentation by Assistant Professor Anna Lund
- The Principles of Fundamental Justice: What Are They Anyway? A presentation by Ph.D. Candidate Colton Fehr
- Do Corporations Have *Charter* Rights? A presentation by Assistant Professor Anna Lund
- Duty to Consult: What is the Governments Duty to Consult Indigenous Peoples? A presentation by Professor Catherine Bell
- The *Charter* the Environment, a presentation by Associate Professor Cam Jefferies

## Summer Student Program

The Centre's summer student program is central to producing plain language articles on the Constitution which are available for access by the general public on the Centre's website. In 2019-20, the Centre hired three law students (Julia Amelio (3L), Michael Graham (3L), and Russell Green (3L)) who produced a total of 20 articles and 5 keywords that addressed many of the current constitutional issues in the news.



*Photo: Julia Amelio, Michael Graham, and Russell Green*

These articles provide an excellent opportunity for the public to learn about the many ways in which the Constitution affects their everyday lives. Here are the articles they produced:

- [Wrangling with the Law: Can Federalism Save Rodeo Animals?](#)
- [Equal Pay for Equal Work? Not in Alberta](#)
- [Back to the Basics – Pipeline Dispute Sees Use of Traditional Constitutional Doctrines](#)
- [Solitary, Segregation or a Structured Intervention Unit – An Unconstitutional Way to Do Time?](#)
- [Is it Time to Dust-Off Section 28 of the Charter?](#)
- [The Military Exception: SCC Affirms No Right to a Trial by Jury for Military Members](#)
- [Comparing Federal Government and Indigenous Perspectives on Self-Government Agreements](#)
- [A Penny for Your Thoughts, If We Like Them: Freedom of Expression on Campus Part 1](#)
- [We Like Our Speech Deep Dish: Freedom of Expression on Post-Secondary Campuses Part 2](#)
- [The Role of the Senate: Robust Regionalism or Diligent Deference?](#)
- [Supreme Court Appointment Process and the Prime Minister of the Day](#)
- [The Feds and a Conversion Therapy Ban: Mixed Messages and Constitutional Challenges](#)
- [Jewish Holidays, Federal Elections, and Court Decisions! Oh My! A National Pharmacare Plan Requires Cooperative Federalism](#)
- [Delay in Alberta Public Sector Arbitration: Responsible Measure or Illegal Attack?](#)
- [A Long and Uncertain Road to Alberta Independence](#)
- [Can the Federal Government Disallow Québec's 'Anti-Religious Symbols' Act? “Inherent Tension”: Is it Time to Separate the Minister of Justice from the Attorney General?](#)
- [The 'Carbon Tax'. Wait, Can the Feds Do That?](#)
- [Climate Emergency vs Emergency Powers](#)
- [Travel Restrictions in a Pandemic: What are your \*Charter\* Rights?](#)

**Constitutional Keywords:**

- [Habeas Corpus](#)
- [Freedom of Association](#) (updated)
- [Equalization Payments](#)
- [Peace, Order and Good Government](#)
- [Charter Application](#)



## U School - Constitution Workshop



The Centre has developed a “Constitution Workshop” for grade 5/6 students about Confederation, the Constitution, and the division of powers between the federal and provincial governments in Canada. The U School program is organized by the University of Alberta Senate and is aimed at introducing and connecting students from socially vulnerable, Indigenous and rural communities to the University of

Alberta. Law students volunteer to teach these workshops which include a trip to the law school moot court room where students present arguments to a law student judge about whether the environment should be a provincial or a federal power. This year, the nine sessions on the Canadian Constitution and the division of powers were taught by 15 law student volunteers, organized by two student volunteer coordinators, to 188 grade 5/6 students.



This year, the Centre has worked on developing a “*Charter Workshop*” for grade 9 students on the *Canadian Charter of Rights and Freedoms*. Two student volunteers are developing a PowerPoint presentation and activity for the Workshop, which is on track to be completed in May. We are grateful for U School’s assistance in providing feedback as we develop the Workshop.

*Photos: (top left) Classroom Activity in the Law Centre; (bottom right) Students present their arguments in Law Centre Moot Room*

## Centre’s Website

The Centre’s [website](#) is its primary repository of plain language articles about the Constitution and information on events hosted annually by the Centre. It includes links to YouTube videos of previous speaker events, projects and related resources. Links to articles published in the Centre’s academic journals, the *Review of Constitutional Studies* and the *Constitutional Forum*, are also available on the website. During 2019-20, the website received 39,152 unique (that is, new) page views and had 18,170 users. It was accessed by individuals in both Canada and internationally (for example, the United States, United Kingdom, India and Italy were the top four countries from which our readers originated).

## Media Resource and Expert Commentary

During 2019-2020, the Centre responded to queries from media about such issues as the role of the Crown in jurisdictional disputes between the federal government and the provinces, the use of the notwithstanding clause, and inter-provincial legal arguments, particularly around Bill 12 in British Columbia.

## Law Day

On April 13, 2019 the Centre participated in Law Day at the Edmonton Law Courts. We presented a Constitutional appeal based concerning the section 8 *Charter* right to be free from unreasonable search and seizure, in the context of being required to blow into a breathalyzer when stopped by a police officer. Two volunteer lawyers, Will van Engen (Bottos Law Group) and Courtney Mah (Alberta Justice) argued the appeal before Justice Shelagh Creagh of the Alberta Provincial Court.



*Photo: Courtney Mah, Justice Creagh, and Will van Engen*

The event was attended by 30 people, many of whom were teenagers, and all were actively engaged by Justice Creagh in assisting with her decision.

## THANK YOU

The Centre's accomplishments in 2019-20 are owed to the efforts and support of great many individuals. We would like to thank student researchers and volunteers, scholars and faculty members in Law, and the departments of Political Science, Native Studies and Sociology at the University of Alberta and across the country for presenting at various Centre hosted events, contributing to our journals, and as members of editorial boards and the Centre's Advisory Board. We would also like to thank U School for their helpful feedback in developing our Grade 9 *Charter* Workshop. We would also like to thank members of the community who attend our events and who are integral to our work.

### Advisory Board Members

Professor Lise Gotell (Chair)

Assistant Professor Valérie Lapointe-Gagnon

Leah McDaniel (Alberta Justice)

Justice Anna Loparco (Alberta Court of Queen's Bench)

Professor James Muir (Vice-Chair)

Assistant Professor Joshua Nichols

Professor Steven Penney

Judy Piercey (Community Member)

Tom Rothwell (Alberta Justice)

Professor Linda Trimble

Professor Jared Wesley

Justice Nate Whitling (Alberta Court of Queen's Bench)

### Review Editorial Board Members

Noura Karazivan, Co-Editor in Chief

Han-Ru Zhou, Co-Editor in Chief

Patricia Paradis, Managing Editor

Joshua Nichols, Book Review Editor

Kate Berger (Law, University of Western Ontario)

Alexandra Dobrowolsky (Political Science, Saint Mary's University)

Hoi Kong (Allard School of Law, University of British Columbia)

Kiera Ladner (Political Studies, University of Manitoba)

Emmett MacFarlane (Political Science,  
University of Waterloo)

Margot Young (Allard School of Law,  
University of British Columbia)

### **Student Researchers, Editors, and Volunteers**

Adrianna Aiello

David Adie

Julia Amelio

Nick Beauchesne

Rachel Day

Justine Fallu

Janaia Fedor

Samantha Fraughton

Michael Graham

Russell Green

Gillianne Hardy-Legault

Lauren Hebert

Emma-Lee Kramer

Case Littlewood

Karen McFadyen

Duncan McManus

Dempsey Nobert

Tristan Patterson

Sheila Raffray

Kimberly Stone

Natalie Thompson

Amanda Tuff-Overes

Lorena Villoria Guerra

Doris Vucijak

Alexandra Warkentin

Lauren Webster

Helen Werbicki

Alanna Wiercinski

James Work

### **Staff**

Patricia Paradis, Executive Director

Paul Atkinson, Public Legal Education Coordinator (July – December, 2019)

Aleena Reitsma, Public Legal Education Coordinator (March 2020 – Current)

Martin Gotthelf, Administrator

# Appendix A - Review of Constitutional Studies, 24.1

## Special Issue – Treaty Federalism

### Table of Contents

Co-Editors: Joshua Nichols, University of Alberta & Amy Swiffen, Concordia University

#### Articles

- *UNDRIP, Treaty Federalism, and Self-Determination*  
*Michael Asch*
- *UN Declaration on the Rights of Indigenous Peoples and Treaty Federalism in Canada*  
*James [Sa'ke'j] Youngblood Henderson*
- *Indigenous Peoples and Interstitial Federalism in Canada*  
*Robert Hamilton*
- *Constitutional Reconciliation and the Canadian Charter of Rights and Freedoms*  
*Amy Swiffen*
- *Legal Pluralism and Caron v Alberta: A Canadian Case Study in Constitutional Interpretation*  
*Ryan Beaton*

#### Book Reviews

- John Borrows, Larry Chartrand, Oonagh E. Fitzgerald, and Risa Schwartz, eds, *Braiding Legal Orders: Implementing the United Nations Declaration on the Rights of Indigenous Peoples*, (Centre for International Governance Innovation (CIGI), 2019)  
*Nigel Bankes*
- John Borrows, *Law's Indigenous Ethics*, (University of Toronto Press, April 2019)  
*Ferdinand Gemoh*

The Review is a [subscriber-based print journal](#). Articles are available through [HeinOnline](#). They will be available in open access on this website as of December 2019 - one year from date of publication.

## Appendix B - Review of Constitutional Studies, 23.2

### General Issue

#### Table of Contents

“Our Time has Come”: Reconciliation in the Wake of *Manitoba Metis Federation Inc. v. Canada (Attorney General)*

*Janique Dubois and Kelly Saunders*

Section 16 of the *Constitution Act, 1867*: The Queen, the Capital, and Canadian Constitutionalism

*Michael Da Silva and Andrew Flavelle Martin*

Des Causes et des Conséquences du Dialogue Constitutionnel

*Jean-Christophe Bédard-Rubin*

Seven Conceptions of Federalism Guiding Canada’s Constitutional Change Process — How Do They Work, and Why So Many?

*Dave Guénette*

#### Review Essay

##### **Proportionality’s Reductio ad Monitum:**

Review Essay on Paul Yowell’s **Constitutional Rights and Constitutional Design**

*G.T. Sigalet*

#### Book Review

Yaniv Roznai, **Unconstitutional Constitutional Amendments: The Limits of Amendment Powers** (Oxford: Oxford University Press, 2017)

*Neliana Rodean*

The *Review* is a [subscriber-based print journal](#). Articles are available through [HeinOnline](#). They will be available in open access on this website as of December 2019 - one year from date of publication.

## Appendix C - *Constitutional Forum*, Volume 28.3

### General Issue

#### **Table of Contents:**

[The Crown and Government Formation: Conventions, Practices, Customs, and Norms](#)

*Philippe Lagassé*

[Le fragile équilibre des intérêts locaux et nationaux dans l'interprétation de la compétence fédérale sur l'aéronautique: l'exemple du parachutisme](#)

*David Robitaille*

[Declarations of Invalidity in Superior Courts](#)

*Mark Mancini*

[Ford et Irwin Toy 30 ans plus tard: une conversation avec le juge de Montigny](#)

*Han-Ru Zhou*

[Ford and Irwin Toy 30 Years Later: A Conversation with Justice Montigny](#)

*Han-Ru Zhou*

## Appendix D - *Constitutional Forum*, Volume 28.4

### Special Issue – Notwithstanding Clause

#### **Table of Contents:**

[Advocacy Notwithstanding the Notwithstanding Clause](#)

*Robert Leckey*

[The Notwithstanding Clause and the New Populism](#)

*Richard Mailey*

[Shouting into the Constitutional Void: Section 28 and Bill 21](#)

*Kerri A Froc*

## Appendix E - *Constitutional Forum*, Volume 29.1

### General Issue

#### **Table of Contents:**

[Seeing Double: Peace, Order, and Good Government, and the Impact of Federal Greenhouse Gas Emissions Legislation on Provincial Jurisdiction](#)

*Andrew Leach and Eric M. Adams*

[Charter Injunctions, Public Interest Presumption, and the Tyranny of the Majority](#)

*Colin Feasby*

[The Conscientious Objection of Medical Practitioners to the CPSO's "Effective Referral" Requirement](#)

*Richard Moon*

[Nothing to Declare: A Response to Grégoire Webber, Eric Mendelsohn, Robert Leckey, and Léonid Sirota on the Effects of the Notwithstanding Clause](#)

*Maxime St-Hilaire and Xavier Focroulle Ménard*