



CANADIAN
CONSTITUTION
FOUNDATION

Annual Report

2019-20



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Foreword

On behalf of the entire team at the CCF, we would like to express our gratitude to our supporters and friends. We hope this report will demonstrate that 2019-20 has been a game-changing year for the CCF, with sustained and new efforts in courts of law and public opinion to hold the government accountable for unconstitutional intrusions on liberty.

With the abrupt arrival of the Covid-19 pandemic early in 2020 and the resultant economic downturn, CCF quickly refocused its efforts. We began consistently tracking, analyzing, and responding to government overreach in the face of the pandemic. We flagged government intrusions into the economy, healthcare, speech, democracy, and mobility rights—demonstrating just how far-reaching the pandemic’s direct effects into our lives were. It is a testament to the acuity and agility of CCF’s small, dedicated staff that we were able to pivot our efforts in response to the times.

Of course, the pandemic has not halted our longer-term initiatives to protect Canadians’ constitutional rights for present and future generations.

After nearly ten years, we are thrilled to tell you that our groundbreaking **healthcare choice** litigation in Cambie Surgery Centre finally concluded in February 2020, and we expect a decision in the near future. This decision will impact the health of every Canadian, and we hope the court will find that government bans on all forms of private health insurance are unlawful violations of bodily integrity.

Also pending is our application to compel the B.C. government, under its *Freedom of Information and Privacy Protection Act*, to disclose the global sum of taxpayers’ money spent on its aggressive tactics defending our Charter challenge in this case. An appeal of a trial court decision holding, strangely, that such disclosure might infringe solicitor-client privilege, was heard in June and we are aware awaiting a decision.

We also remain active on **freedom of speech** and **individual liberty** issues. An appellate decision in the matter of Carolyn Strom, a Saskatchewan nurse, is pending. She was professionally reprimanded for publicly criticizing her father’s treatment.

Additionally, oral argument commences in the Ontario Superior Court this September in our s. 91 **Canada Elections Act Charter challenge**, which seeks a determination that the federal restrictions on so-called ‘fake news’ are excessively draconian and will lead to a chilling effect on healthy political debate.

We celebrated wins in two of our cases touching on **free speech and the rule of law**. We welcomed a positive outcome for free speech in *Fleming v. Ontario*, where the Supreme Court of Canada adopted many of the CCF's submissions and helped ensure a zone of protection for the lawful exercise of rights. We also were heartened by the Ontario Court of Appeal's decision in *Toronto (City Council) v. Ontario*, focused on how courts should approach the hard work of constitutional interpretation.

We welcomed a **new all-star Director of Litigation, Christine van Geyn**, to our team in June 2020. Christine brings a wealth of experience as a former Ontario Director of the Canadian Taxpayers' Federation and lawyer in private practice and is passionate about our mission of protecting liberty.

The **Runnymede Society** continues to develop and grow, as National Director Mark Mancini has excelled in his role bringing open debate and liberty-oriented approaches to law to nearly every law school in the country, as well as launched supplementary content in the form of a weekly podcast and Summer Speaker Series featuring prominent judges, scholars, and lawyers.

Looking ahead, with no clear path out of the pandemic soon, we will continue to tailor our efforts on securing government accountability to the Constitution and ensuring that so-called 'temporary measures' taken in the face of an emergency do not ossify into permanent government overreach.

We thank you for taking the time to learn more about our work, and for your support. If you are not already a donor and are looking for ways to support liberty, I invite you to join Freedom's Defence Team.

Sincerely,



Joanna Baron
Executive Director
Canadian Constitution Foundation





CANADIAN CONSTITUTION FOUNDATION

The Canadian Constitution Foundation (CCF) protects the constitutional freedoms of Canadians through education, communication and litigation.

The CCF is grateful for the help and support given by our donors, volunteers, clients, board and advisory board members, and staff.

Our mandate includes:

Individual Freedoms

(Section 2 of the Charter of Rights and Freedoms):

- freedom of association
- freedom of peaceful assembly
- freedom of conscience and religion
- freedom of expression, belief and opinion

Economic Liberty

(Section 7 of the Charter of Rights and Freedoms):

The right to earn a living free from arbitrary interference from government; the basic human right to own and enjoy property.

Equal Opportunity

(Section 15 of the Charter of Rights and Freedoms):

The right to equality before the law for all individuals.

Litigation

Healthcare Freedom and Patient Rights

Cambie v. MSCB et al.

The marathon trial for healthcare freedom and patient choice in the Supreme Court of British Columbia finally ended in February, 2020. After years of delays, caused in large part by the government's lawyers, the patient plaintiffs and the Cambie Surgery Centre had their case heard in court. At no point did the opposing government lawyers introduced any hard evidence or data to show that private clinics operating in BC for decades have caused harm to the province's public healthcare system.

Cambie Surgeries Corporation et al v. Medical Services Commission et al. is a constitutional challenge taking place in British Columbia to bring choice and

compassion to Canada's healthcare system. The goal is to stop the suffering and empower Canadians to care for their own health, as should be their right under the *Canadian Charter of Rights and Freedoms'* guarantee of security of the person.

We expect a decision in favour of the rights of Canadian patients before the end of 2020. More information on this case, including the latest news, can be found at yourhealthcantwait.ca. Donations for this case are still being collected as we fully expect this case to go all the way to the Supreme Court of Canada.

Freedom of Information request

In June 2020, the CCF was in the Court of Appeal for British Columbia making oral arguments in favour of disclosing the government's costs in the Cambie case described above.

We believe British Columbians should know how much money their government has spent paying for lawyers to use delay tactic

after delay tactic in the hopes of exhausting the patient plaintiffs. On August 21, 2020, the court ruled that the single global number of this expense is subject to solicitor-client privilege. While we were disappointed by this result and the precedent it sets for government accountability, we look forward to the decision in our main case for healthcare choice.



**YOUR HEALTH
CAN'T WAIT**

Freedom of Expression

Victory for free speech at the Supreme Court

In October 2019, the Supreme Court of Canada decided that Randy Fleming was illegally arrested by the Ontario Provincial Police in 2009. The CCF intervened in this appeal because it believes that freedom of expression must be protected from undue interference by the state. The Fleming decision supports that view.

The Supreme Court of Canada has held that

a protestor, who is not breaking any laws or inciting any violence themselves, cannot be arrested by the police under common law simply because their expression might provoke or enrage another party to breach the peace. This helps ensure a zone of protection for the lawful exercise of constitutional and other fundamental rights, which is critical in a free and democratic society like Canada.

In support of Carolyn Strom

In September 2019, the CCF made its oral argument in support of Ms. Strom and free expression. The CCF argued before the Saskatchewan Court of Appeal in particular, the right of nurses to speak publicly without fear of reprisal from their professional regulatory bodies.

The issue at the heart in this appeal is whether Strom is free to speak about her

first-hand experience of the poor quality medical care that her ailing grandfather received, or whether the province of Saskatchewan—through a professional regulator—can restrict her right to freedom of expression and stop her blowing the whistle on what she perceived as poor quality care. We are currently awaiting a decision.

Challenging censorship during elections

The CCF is challenging the Canada Elections Act after the federal government made changes that violate the Charter guarantee to free expression. Political speech, perhaps more than any form of speech, must be protected in a free and democratic society.

Under the Act, it is an offence to attempt to influence an election by making or publishing certain types of “false” statements about political candidates and other public figures during an election

period. The law is both broad and vague in its definitions.

While court proceedings for this case have been delayed due to COVID-19, the CCF is determined to make this case a centerpiece on our refocused efforts to defend free expression and political speech.

Our lawyers will be appearing in court in September 2020 to proceed with this case.

Dismantling trade barriers after *Comeau*

In December 2019, the Alberta Court of Appeal decided that the Government of Alberta violated section 121 of the *Constitution Act, 1867* when it enforced a series of trade-blocking policies beginning in 2015.

Aside from being an intervener in this case, this case relied on the *Comeau* case—the

CCF’s landmark case that sought to enforce Canada’s founders’ vision of a single economic union.

The CCF has great hopes that the *Comeau* ruling will continue to be used to dismantle other interprovincial trade barriers as they come before our courts.

Protecting the proper interpretation of our constitution

In another CCF victory this past year, the Ontario Court of Appeal decided in September, 2019 that participation in a municipal election, either as a candidate or as a voter, is not protected as “expressive activity” under section 2(b) of the *Charter* in *ONCA Toronto (City Council) v Ontario*.

Our intervention in this matter was focused on how courts should approach the hard

work of constitutional interpretation. In its decision, a majority of the Court of Appeal decided the case in a manner that ensures respect for the limits of the judicial role in deciding when and how governments may limit *Charter* rights, as well as an interpretive approach rooted in the text of the *Charter* itself. We applaud the decision.

Corporations & freedom from cruel and unusual punishment

The CCF chose to intervene in this case because it could have a broad impact upon the development of section 12 jurisprudence.

How the Supreme Court of Canada addresses this issue is important for all Canadians in at least two ways. First, and most obviously, the Court will decide whether corporations, and their human

stakeholders, are protected by the *Charter* when facing fines or other punishments and treatments that are grossly disproportionate or outrageously excessive. But second, and perhaps more significantly, in this case, the SCC will set the methodology to be used by future courts in addressing similar disputes from across the nation. We are currently awaiting a decision.



COVID-19 Watch - theccf.ca/covid19blog

In early 2020, the COVID-19 pandemic resulted in Canadian governments at all levels enacting emergency policies to manage public health resources and slow the spread of the virus. These policies have come at a cost, much of which is accepted by most Canadians who understand that in order to face this unprecedented challenge, day-to-day activities and behaviours had to be altered.

Government accountability and preservation of the rule of law has been tested during this period. Individual rights have been temporarily curtailed, and in at least some instances these curtailments have been reasonable, proportionate, and justified.

Throughout this period, the CCF has remained vigilant in defending constitutional rights and freedoms. We have kept watch over policies and issued letters and warnings over inappropriate measures that **cannot** be justified in a free society. And the CCF will not hesitate to pursue legal challenges if adjustments are not made to bad laws and health orders to make them constitutionally compliant. In particular, we will ensure that even reasonable emergency measures do not translate to permanent expansion of government authority after the crisis has passed.

In addition to our efforts in the courts, the CCF has been monitoring all levels of government action for compliance with constitutionally-guaranteed liberties and analyzing violations where we identify them. We advocated against using cellphone data to track patients, illegal provincial border closures, decrees that shut down businesses arbitrarily and attempts by premiers to cast aside democratic accountability. We also pushed back against excessive face-covering bylaws, prompting changes to a major Ontario health unit's unconstitutional order. We invite you to read all of our analyses on [our blog](#).

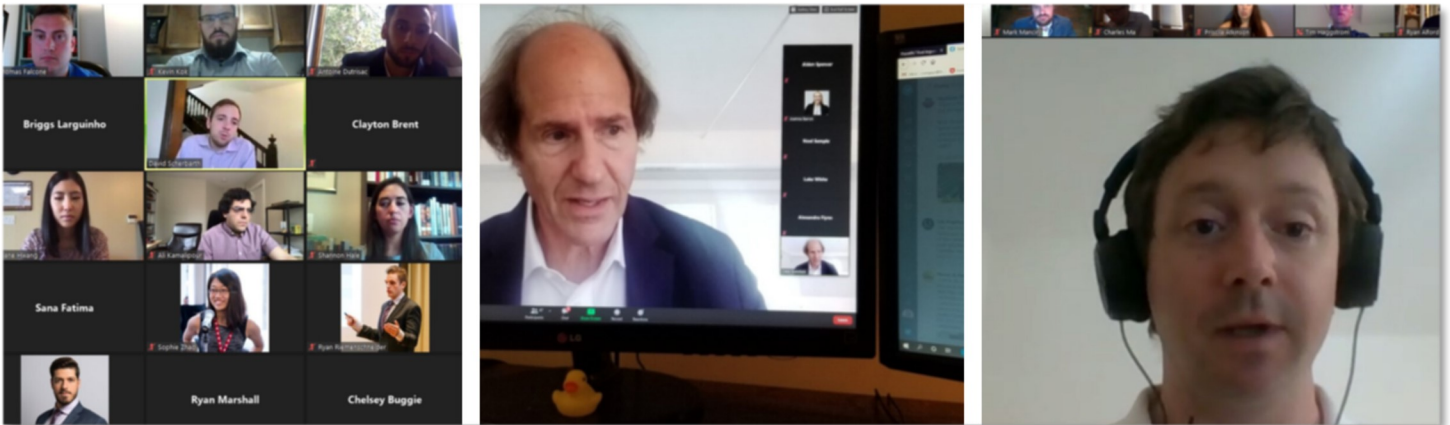


Through on-campus debates and discussion, the Runnymede Society ensures that free speech and intellectual diversity remain an active part of Canadian law school life. The Runnymede Society's success has grown year after year with Society chapters hosting **30+** events in the last year.

The Runnymede Society provides outstanding support and opportunities for intellectual enrichment, networking, and professional development. This includes providing members opportunities to meet professors, practitioners, and judges supportive of our mission.

Some of the standout events this past year (2019-2020) include:

- **Examining the Supreme Court Appointment Process** with Professor Peter Russell (Toronto), Professor John Whyte (Regina), & Professor Jamie Cameron (Osgoode) at Osgoode Hall Law School, Sept 25, 2019.
- **Interrogating the Living Tree** with Justice David Stratas (Federal Court of Appeal) & Justice Marc Nadon (Federal Court of Appeal) at University of Ottawa, Oct 8, 2019.
- **LSO Statement of Principles: Moving Forward** with D. Jared Brown & Omar Ha-Redeye at Osgoode Hall Law School, Feb 3, 2020.
- **Independence and Collegiality: How Do They Co-Exist at the Supreme Court of Canada?** with Justice Suzanne Côté (Supreme Court of Canada) at University of Ottawa, Feb 26, 2020.
- **Justice Jack Watson on The Rule of Law** with Justice Jack Watson (ABCA) at State & Main, Edmonton, Mar 8, 2020.
- **British Columbia's Adoption of UNDRIP: A Step Toward Reconciliation?** with Professor Gordon Christie (UBC) & Mr. Thomas Isaac (Cassels) University of British Columbia, Mar 11, 2020.



Student Leadership Conference

The Runnymede Society hosted its Zoom, socially-distanced Student Leadership Conference on August 8, 2020. Students from across the country gathered on Zoom for the day to hear from substantive speakers, learn how to run a Runnymede Society chapter, and get advice from incoming Supreme Court clerks on how to apply for clerkships.

This year we hosted:

- **Professor Paul Daly** (University of Ottawa)
- **Professor Jennifer Nou** (University of Chicago Law School)
- **Professor Ryan Alford** (Lakehead University)

Summer Speaker Series

For the first time, the Runnymede Society hosted a Summer Speaker Series on Zoom. Students, academics, and practicing lawyers heard from legal luminaries including:

Professor Richard Epstein (NYU Law)
 Professor Cass Sunstein (Harvard Law School)
 Justice David Stratias (Federal Court of Appeal)
 Justice Lorne Sossin (Ontario Superior Court)
 Professor Debra Parkes (University of British Columbia)

Lawyers' Chapter

The Runnymede Society launched its special membership group for practicing lawyers in 2021. Members get a number of free perks, including discounted admission to events (especially our Law and Freedom Conference). See the Runnymede Society's [website](#) for more details.



2020 Law and Freedom conference

Our 2020 Law and Freedom conference was a smashing success. Over 200 people gathered at Hart House in January 2020 for our annual conference, which gathers law students, academics, and practicing lawyers to discuss the most pressing issues in Canadian law. Our two keynotes for the conference were:

- Former Justice Marshall Rothstein (Supreme Court of Canada)
- Professor Randy Barnett (Georgetown University)

Video clips of all panels are available on the Society's [YouTube channel](#).



PrimaryDocuments.ca

Our archive of Canada's primary constitutional documents

In 2019/2020, [Primary Documents](#) project become more expansive, more intuitive, and even more prominent in the academic community. In 2020, the Primary Documents project is pursuing three major goals.

Recently, we uncovered previously unpublished drafts of the Quebec Resolutions. These have now been transcribed, analyzed, and classified into a collection that will soon be published for the first time in Canadian history. Our book has now undergone two printings and we expect to release these materials in the upcoming year. Our volume on the Quebec Conference will be comprehensive. We will be publishing the uncovered drafts, correspondence, newspapers surrounding the events, and any other document which sheds unique light on the formation of these important resolutions.

Our website, too, continues to grow, rapidly expanding its collection. We now have over 3,100 documents, adding hundreds this year. Our new documents touch many areas of Canada's constitutional history—from pre-Confederation to Newfoundland's entry into Confederation.

Finally, our project is pleased to announce an overhaul to how our search engine works. This will make our website more user-friendly, and easier for the researcher to find what he needs in our collection. Our new search engine will allow users to search by section of the Constitution, find speakers within documents, and help the user refine their search.



Communications

The CCF continues as the leading liberty-minded legal charity in Canada, with a consistent presence in the national and international media. Here are some highlights:

- In 2020/2021, the Canadian Constitution Foundation was mentioned more often in the media than any previous year and was directly named in **over 1,100 articles** online and in print in Canadian and American media.
- Media mentions of the CCF were not just articles about CCF cases and projects, but also included statements made by CCF staff discussing trending constitutional and legal issues in Canada.
- The CCF's Facebook page saw a **14%** increase in followers over last year. The CCF aims to increase this growth rate to over 20% in the coming year to once again become the leading civil liberties organization on Facebook by followers.
- Even many years later, the impact of the CCF's Comeau case is still felt with **869** articles in online and print discussing interprovincial trade in Canada in 2019/2020 versus only 161 mentions in 2013/2014, prior to the case.
- In 2020, the CCF hired Christine Van Geyn, formerly of the Canadian Taxpayers Federation, as litigation director. In this role, Christine will assist the CCF in our renewed emphasis on communicating the CCF's cases and projects.
- While 2019/2020 saw nearly across the board growth in our media and public outreach work, the CCF expects to increase its growth by an even wider margin in the coming year to help us defend constitutional rights and freedoms in the "court of public opinion".

Audited Financials

Revenue	
Contributions and grants	\$995,005
Restricted contributions	\$2,254,898
Other revenue	\$13,931
Interest	\$23
Total	\$3,263,857

Expenses	
Project activities	\$2,345,246
Staff salaries	\$500,487
Office and administration	\$189,368
Travel and fundraising	\$42,907
Amortization and realized loss	\$3,662
Total	\$3,081,670



CANADIAN CONSTITUTION FOUNDATION

Contact us

The Canadian Constitution Foundation (CCF) is a registered charity, independent and non-partisan. We defend the constitutional rights and freedoms of Canadians in the courts of law and public opinion.

By phone or email:

(Toll Free) 1.888.695.9105 — info@theccf.ca

By mail:

Canadian Constitution Foundation
6025—12 St SE, Suite 215
Calgary, AB T2H 2K1

Charitable Number: 86617 6654 RR0001
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