

Annual Report

2021/2022



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CANADIAN
CONSTITUTION
FOUNDATION

Contents

<u>About the CCF</u>	<u>3</u>
<u>Foreword</u>	<u>4</u>
<u>Ongoing Litigation</u>	<u>6</u>
<u>New Cases</u>	<u>8</u>
<u>Runnymede Society</u>	<u>10</u>
<u>Constitutional Law Course</u>	<u>12</u>
<u>Primary Documents</u>	<u>13</u>
<u>Communications</u>	<u>14</u>
<u>Audited Financials</u>	<u>16</u>
<u>Contact</u>	<u>17</u>

ABOUT THE CCF

The Canadian Constitution Foundation (CCF) is a national and non-partisan charity. We are dedicated to defending the constitutionally protected rights and freedoms of Canadians, and to maintaining Canada's constitution, including its federal structure and division of powers, as intended in the *Constitution Act, 1867*.

Our charitable registration number is: 86617 6654 RR0001

OUR MANDATE

INDIVIDUAL FREEDOMS

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

Freedom of conscience and religion

Freedom of thought, belief, opinion, and expression

Freedom of peaceful assembly

Freedom of association

LIBERTY

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

The right to life, liberty and security of the person.

EQUAL OPPORTUNITY

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

The right to equality before the law for all individuals.

FEDERALISM

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

Defend the federal division of powers between Parliament and the Provinces.

Minimize government overreach that upsets the constitutional compromise reached by Canada's Fathers of Confederation.

Foreword

Dear CCF friends and supporters,

As you read through this report, I'm sure you will agree that the past year has been a banner year for the Canadian Constitution Foundation, with unprecedented growth in litigation, communications, and education activities. These activities further our mission of defending constitutional liberties in both the courts of law and the court of public opinion.

This year, we've launched major constitutional challenges, produced Canada's first publicly accessible in-depth constitutional law course, and sparked discussion amongst Canadians of all walks of life about the importance, now more than ever, of strengthening our constitutional liberties.

2022 began with the government's invocation of the *Emergencies Act* for the first time in history in response to ongoing protests and border blockades opposing vaccine mandates. A few days after the invocation, the CCF announced the launch of a court challenge against this invocation, which gave the government sweeping powers to enforce bans on peaceful assemblies, restrict movement, and most famously, freeze bank accounts without the need for a warrant.

The CCF's position has been consistent from the beginning: the *Emergencies Act* is a measure of last resort which carries a strict statutory definition in order to be invoked, and its invocation was absolutely unjustified.

We continue to vigorously resist the government in court in this matter, including by challenging blanket assertions of cabinet confidence privilege over the bulk of the evidence relevant to a judicial determination of whether the invocation was justified and cross-examining witnesses. We look forward to obtaining a strong precedent that clarifies which conditions are necessary for the government to expand its powers in this extraordinary way.

Besides the *Emergencies Act*, the CCF also took the government of British Columbia to court to challenge their failure to provide workable medical exemptions in their vaccine passport regime. Our co-applicants included Erika, a 16-year-old teen who developed pericarditis after her first dose of the Pfizer vaccine but who was not able to receive a permanent exemption from the province's vaccine passport regime, making it nearly impossible for her to go to a restaurant, see a movie or visit a museum.

Outside of the pandemic context, the CCF has continued to work diligently to defend your constitutional rights, including the right to free expression. We achieved an important victory for free speech at the Supreme Court this year in the case of *Mike Ward v. Quebec*, where the Court overturned a \$40,000 fine against a comedian for a tasteless joke. The state should not be in the business of policing the limits of dark comedy, and the baseline importance of open discourse in a free society was rightfully defended by the Court in this case.

Of course, CCF has also continued its advocacy in courts of public opinion, sharing its legal analysis in the media. Litigation Director Christine van Geyn has built Canada's most popular YouTube channel dedicated to Canadian constitutional law, with weekly video blogs. You can subscribe at www.youtube.com/c/theCCF.

We have sadly also witnessed a dangerous collapse of Canadian healthcare systems in 2022, with emergency department closures, staffing shortages, and staggering wait-times for care across the country. It's clear that fundamental reform is necessary, and that government monopolies on healthcare can no longer be defended.

We were disappointed by the BC Court of Appeal's finding in July 2022 in *Cambie v. Attorney General of BC* that government bans on private care, even though they violated the right to life and security, were justified to protect the public system. Nevertheless, this challenge in defence of patients' rights was always destined to be decided at the Supreme Court of Canada, and we look forward to making our strongest constitutional arguments there.

Although we are humbled and encouraged by our progress this year, the work of restoring liberty in Canada remains daunting.

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 whether as a monthly or one-time donor.



JOANNA BARON
Executive Director



Litigation

Healthcare Freedom and Patient Rights

Cambie v. MSCB et al.

In July of 2022, the BC Court of Appeal released its long awaited [decision](#) in our Healthcare Freedom case [*Cambie v. British Columbia (Attorney General)*]. The appeal was dismissed with the majority written by Chief Justice Bauman and Justice Harris. While disappointed in this decision at the BC Court of Appeal, the CCF remains optimistic that a result in favour of patient rights and freedom can be achieved at the Supreme Court of Canada.

Our hearts go out to the patients who have suffered on endless government waiting lists while their health deteriorates. We know that long wait times for patients worsen medical outcomes, and that patients even die on these government waiting lists. Greater patient choice and freedom are needed in Canada more than ever before. The CCF remains committed to seeking a just outcome for all Canadian patients in this landmark case.



For more about the **Healthcare Freedom** case, see yourhealthcantwait.ca

Intervening in defence of property rights

Annapolis Group Inc v Halifax Regional Municipality

This case involves an allegation by Annapolis Group that the Halifax Regional Municipality is obstructing its attempts to develop Annapolis owned land, while simultaneously encouraging the public to use Annapolis land as a park. Annapolis alleges that this amounts to a de facto expropriation of their property by the government. We intervened in this case to urge the Supreme Court to revisit the test on de facto expropriation in order to ensure stronger protections for property owners, and made arguments about what we think the proper legal test should be. The case was heard on February 16, 2022. We await the decision.

Protecting the proper interpretation of our constitution

ONCA Toronto (City Council) v Ontario

CCF VICTORY!

In October of 2021, the Supreme Court of Canada [dismissed](#) the City of Toronto's appeal, finding that Ontario's legislation reducing the size of Toronto's city council did not violate section 2(b) of the Charter. In arriving at its decision, the SCC relied on many of the CCF's arguments.

The CCF's intervention at the Supreme Court focused on a principled and constrained approach to constitutional interpretation. It submitted that the Supreme Court ought to decide the case in a manner that ensures respect for the limits of the judiciary in determining when and how governments may limit Charter rights.



Intervention at Supreme Court for public interest organizations

Council of Canadians with Disabilities v. British Columbia (Attorney General)

CCF VICTORY!

The case involved the test for public interest standing and was heard by the Supreme Court of Canada. It was essential for the CCF to be involved as a frequent litigant defending constitutional rights and freedoms. A liberal and generous interpretation of the requirements for public interest standing is necessary to ensure access to the courts for Canadians who cannot effectively litigate issues of importance to themselves and the wider public. On June 23, 2022 [a favourable decision](#) was announced by the Supreme Court of Canada. We applaud the Court's decision clarifying the important role that public interest organizations serve in Canadian society.

Litigation

Free expression in comedy

Ward v Quebec Human Rights Tribunal

CCF VICTORY!

In another successful CCF intervention at the Supreme Court of Canada, [a judgment](#) in favour of free expression was released in October, 2021. The case involved a Quebec comedian, Mike Ward, who was fined by the Quebec Human Rights Commission. The Commission concluded that jokes made by Mike Ward about Jeremy Gabriel, a boy who lives with a disability, were discriminatory and violated the dignity of Mr Gabriel. Allowing the Quebec government to set the limits on comedy through fines could create a chilling effect for artistic liberty and is an undue limit on the right to freedom of expression. Speech, even controversial or repugnant speech, is protected from unjustified state intrusion. And even if Mr. Ward's comedy routine was distasteful, it should not be policed by the government. Like all comedy, it should be judged by audiences.

The Supreme Court of Canada adopted the CCF's proposed test, finding that where there are competing rights under the Quebec Charter, these rights must be balanced with a proper regard for democratic values, especially the societal value of free expression. The Court affirmed the CCF's position that freedom of expression is not merely a defence, but also an internal limit to the scope of rights protected in the Quebec Charter. The SCC's decision clarified all Canadians' sacred right to express oneself openly in a free society.



Challenge against BC's discriminatory vaccine passport

Kassian et al v. British Columbia

In January of 2022, the CCF [filed a petition](#) with the Supreme Court of British Columbia challenging the constitutionality of the province's proof of vaccination policy. Our case dealt with the urgent needs of individuals who could not be vaccinated for good faith medical reasons. The BC government lacked a workable regime in place for medical exemptions. Even individuals with clear-cut cases for medical exemptions cannot obtain general exemptions. This failure by the BC government has had a grossly discriminatory impact on our individual petitioners, and is unconstitutional.

Though a vaccine passport is no longer needed to access events, services and certain businesses as of August, 2022 in British Columbia, the CCF is continuing with its litigation to seek clarification from the courts so that people unable to get vaccinated are not discriminated against in case future conditions pressure the government to reintroduce such measures.

On September 12, the BC Supreme Court issued [its decision](#) dismissing the case as premature. The government evaded constitutional review in this case by filing evidence that the government was accepting medical exemption applications for conditions beyond those in the limited list in its mandatory application forms. Essentially, the government defended unconstitutional orders by saying they secretly didn't actually follow them, and then faulted the petitioners for not having known this. The CCF is currently considering an appeal.

New Cases

Emergencies Act challenge

On February 17, 2022, the CCF announced the launch of a legal challenge against the federal government's invocation of the *Emergencies Act*. Prime Minister Trudeau's government set a dangerous precedent by invoking the never before used Act to address ongoing blockades and protests throughout the country. The high threshold for declaring a public order emergency in the *Emergencies Act* was not met. And the consequences of invoking the Act were extreme, with unprecedented police powers to stop peaceful protests, arrest individuals, as well as the ability to freeze bank accounts without a warrant.

Regardless of one's view of the protests, all Canadians should be able to see why dealing with it in this heavy-handed way set a dangerous precedent that must be corrected.

While the federal cabinet revoked the proclamation of a public order emergency shortly after the Act was invoked, the CCF is continuing with its litigation to make sure it isn't used improperly again. It is imperative this legislation receive scrutiny the first time it is used, especially when the circumstances of its use are so questionable. As described by our lawyers Sujit Choudhry and Janani Shanmuganathan, "The interpretation of the *Emergencies Act* by the courts will be historic, and the declaration of a public order emergency will be seen as a grave mistake that should never be repeated again."

We await our next hearing in the fall of 2022.

Rouleau Commission

The CCF is also preparing for our involvement in the Public Order Emergency Commission, also known as the Rouleau Commission. We have been granted standing to participate in this Commission alongside Professor Ryan Alford, one of Canada's leading experts in emergencies law. Having standing in this important Commission means the CCF can provide necessary contributions to the inquiry. This inquiry is required by law after the *Emergencies Act* has been invoked. Hearings begin Sept 19, 2022.



New Cases

Charter application outside of Canada

McGregor v The Queen

The CCF intervened in the Supreme Court hearing of *McGregor v The Queen* on May 19, 2022 to argue for a new proposed test about when the *Canadian Charter of Rights and Freedoms* applies outside of Canada's borders. This case involves Corporal C.R. McGregor who, on court martial, was found guilty of numerous serious crimes. Importantly to the CCF, these alleged offences occurred while he was stationed in Washington, D.C. The overwhelming question in this case is 'What is the test for whether the Charter applies outside of Canada?' Our proposed test ensures that all Canadians' rights and freedoms under the Charter are appropriately protected in cases outside of Canada. We await the court's decision.

Trudeau Flag case

CCF VICTORY!

In late 2021, the CCF announced its support for a Port Colborne resident over a dispute concerning an anti-Trudeau flag she had displayed on her home. Melissa is a working mom who was disappointed with the outcome of the September 21, 2021 federal election. The day after the election she decided to express her frustration by hanging a flag on the front of her house. The flag says "F*CK TRUDEAU". The * is symbolized as a maple leaf.

In January 2022, in response to this legal action, [Port Colborne rescinded their order](#) to have the flag removed.

We celebrate this free speech victory for Melissa, the CCF, and for all Canadians who value their right to political speech and to be free of the petty authoritarianism sometimes used by local authorities against residents.





RUNNYMEDE SOCIETY

In July 2021, Kristopher Kinsinger stepped into the role of national director of the Runnymede Society. Runnymede's presence has expanded apace over the last year, and our law student membership group is poised to continue making inroads in the legal academy and profession during the upcoming year.

In March, our Law & Freedom conference returned in person at Hart House on the University of Toronto's campus. Our keynote sessions included well-received and provocative talks by Marie Henein (Henein Hutchison LLP) and Justice Suzanne Côté (Supreme Court of Canada). At the close of the conference, Kristopher announced – to great enthusiasm from our attendees – that Justice Russell Brown (Supreme Court of Canada) will deliver the keynote lecture at Law & Freedom 2023, which is scheduled to take place once again from January 20-21 at Hart House.

Runnymede's student chapters remain the core of our organization. Although the pandemic posed multiple challenges for our student chapters (from pivoting to virtual events to leadership turnover) we are pleased to report that Runnymede now has 19 active student chapters in Canadian law schools, including three chapters in Quebec. Additionally, we are excited to announce the launch of our first undergraduate student chapter at the University of British Columbia Okanagan; planning is underway to launch additional ungraduated chapters at other universities.



Runnymede's incoming cohort of student chapter leaders met in Ottawa this past July for our annual two-day student summit. Our speakers included Justice Marc Nadon (Federal Court of Appeal, retired), Thomas Slade (Supreme Advocacy LLP), and Professor Stéphane Sérafin (University of Ottawa). This year's cohort is one of the most intelligent and lively that we have seen, and we have no doubt that these students will go on to become important leaders in the academy, in the bar, and – one day – on the bench.



RUNNYMEDE SOCIETY



Runnymede also continues to expand our presence in the legal profession. To provide our student alumni with an opportunity to remain engaged with Runnymede after they are called to the bar, we successfully relaunched our lawyer chapter program in 2021 with chapters in Montreal, Toronto, Edmonton, and Vancouver. In 2022, we appointed leadership for two new lawyer chapters in Calgary and Ottawa and are in active discussions with lawyers in other major Canadian cities about launching additional chapters.

Our lawyer chapters offer both Runnymede alumni and newcomers the opportunity to engage with leading jurists and scholars in continuing education-style sessions. In May, our Toronto chapter hosted a well-attended event moderated by Asher Honickman (Jordan Honickman Barristers) at Osler, Hoskin & Harcourt LLP with Justices David Stratas (Federal Court of Appeal) and Fred Myers (Ontario Superior Court) on legal advocacy.

Planning for similar events is underway with our other chapters, including an event at Miller Thomson's LLP's Vancouver office on December 15 with Justice Mary Newbury (British Columbia Court of Appeal).

This past year marked a high point for Runnymede's foray into academic publishing. Following our first volume in 2021, our second volume of the Dicey Law Review (a collaboration between Runnymede, Advocates for the Rule of Law, and LexisNexis) is scheduled to be published this fall. In March, we hosted an academic symposium on constitutionalism, the papers from which will be published next year by LexisNexis as a special edition of the Supreme Court Law Review that is being co-edited by Kristopher, Maxime, and Ryan Alford. Plans are already underway for a follow-up volume on private rights and the rule of law, the symposium for which will be held in Banff next July.

Constitutional Law Course

In March, 2022, the CCF unveiled a new online course about Canada's constitution and fundamental freedoms that is available for members of the public for free. The course is available at theccf.ca/learn, and includes a series of video lectures followed by quizzes. Upon completion, students receive a personalized certificate they can print or share on social media.

The CCF would like to thank Chantal Bellavance, who was instrumental in putting together the course.

As of September, 2022 **over 2,300** Canadians have signed up for the course. The CCF wants to give a special thank you to all the experts who participated in the material for this course, including:

- **Dwight Newman**, Professor and Canada Research Chair in Indigenous Rights in Constitutional and International Law at the University of Saskatchewan College of Law
- **Geoffrey Cowper, KC**, Partner at Fasken Martineau DuMoulin LLP
- **Kelsey Flanagan**, Lawyer with Henein Hutchison LLP
- **Jennifer Quaid**, Associate Professor at University of Ottawa School of Law
- **Kerri Froc**, Associate Professor at University of New Brunswick School of Law
- **Geoffrey Sigale**, Assistant Professor of Law and Politics at University of British Columbia's Okanagan Campus
- **Ryan Alford**, Professor at the Lakehead University Bora Laskin School of Law
- **Asher Honickman**, Partner at Jordan Honickman Barristers and Founder of Advocates for the Rule of Law



PrimaryDocuments.ca



In 2021/22, the Primary Documents project revamped the website, prepared its second book for publishing, and has further increased the collection's holdings. After last year's publication "The Quebec Resolutions", we are following our book series up with "The Confederation Debates in the Province of Canada", which will be published this September, and will be the most complete collection of these foundational debates to date. The three-volume e-book will be available for free download at PrimaryDocuments.ca. Both books will be published in hardcover format in the near future.

Our website has also undergone significant updates. Our new search engine allows users to search using multiple criteria to narrow down their research—by section of the Constitution, by author, by speaker (such as when someone spoke in the House of Commons), and more. This new advanced feature has just been launched and so, we are in the midst of populating this new engine with data in the coming months. As we add more data, these new features will become more useful.

Our website, too, continues to grow, rapidly expanding its collection. We now have **over 4,100** documents online, adding hundreds more this year. Our new documents touch many areas of Canada's constitutional history—from pre-Confederation newspapers to debates on Canada's Charter and beyond.

While we continue to add primary source material, we have also added more section reports and collections. Section reports consist of the drafting and legislative history regarding specific sections of the Constitution, including relevant issues today such as mobility rights. Our collections, meanwhile, consist of curated documents relevant to certain topics—such as the *Emergencies Act*—which was used as a source for the Wall Street Journal. We are set to add hundreds of more documents in the coming year.

Communications

The CCF remains the leading liberty-minded legal charity in Canada in the news and online.

Overview:

- We saw huge growth in our YouTube subscribers and views. Litigation Director Christine Van Geyn's video Freedom Updates grew our subscriber count from 1,270 to **33,603** (Sept 1 2021 to Sept 1, 2022)
- We experienced exponential website traffic growth beginning with the announcement of the *Emergencies Act* challenge.
- The CCF's work appeared on the front page of the Toronto Star and Globe and Mail (August 2022)
- In 2021/2022, the Canadian Constitution Foundation was mentioned directly by name in over 1,600 articles online and in print in Canadian and American media.
- We saw continued growth across popular social media platforms.

Social Media

+2646%

YouTube Subscribers

From 1,270 **to 33,603 YouTube subscribers** (Sept 1, 2021 to Sept 1, 2022)

+33%

Facebook Likes

From 24,062 **to 31,964 Facebook likes**
(Sept 1, 2021 to Sept 1, 2022)

+75%

Twitter Followers

From 5,519 **to 9,681 Twitter followers**
(Sept 1, 2021 to Sept 1, 2022)

Growth in reach and fundraising

- The CCF's Freedom update saw its 12,500 active subscribers increase to over **19,284** active subscribers(Sept 1, 2021 to Sept 1, 2022).
- We raised **over \$240,000** to fight the federal government's unjustified use of the *Emergencies Act*, including **over \$54,000** raised in a special July 2022 fundraising campaign.
- Our YouTube videos received **over 1 million** views from Sept 1, 2021 to Sept 2022 with viewers watching **over 76,000** hours of CCF content publicizing our work defending Canadians' rights and freedoms.

Audited Financials

April 1, 2021 to March 31, 2022

REVENUE: OVER **98%** FROM PRIVATE DONORS
& FOUNDATIONS.

Contributions & Grants:	\$1,604,836
Restricted Contributions:	\$1,224,424
Other Revenue:	\$130
Government Programs:	\$38,354
 Total Revenue:	 \$2,867,744

EXPENSES: **63%** GOES TO PROJECT ACTIVITIES.

Project Activities:	\$1,400,215
Staff Salaries	\$495,584
Office & Administration	\$254,659
Travel & Fundraising	\$41,255
Amortization & Realized Loss	\$32,909
 Total Expenses:	 \$2,224,592



CANADIAN CONSTITUTION FOUNDATION

The **Canadian Constitution Foundation** is a national and non-partisan charity. Our mission is to defend the constitutionally protected rights and freedoms of Canadians, and uphold the constitution and its liberty-promoting features, including Canadian federalism.

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