Introduction

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This issue of the *Forum* features four of the papers presented at the Constitutional Symposium hosted by the Centre for Constitutional Studies in fall 2013. The papers are stellar examples of the diversity of constitutional topics presented there.

In "*Searches of Digital Devices Incident to Arrest:* R v Fearon" **Professor Steven Penney** reminds us that section 8 of the *Charter* protects the public's right to be free from **unreasonable** search and seizure by the police. Thus he critiques the Ontario Court of Appeal decision in *R v Fearon* to allow cursory searches of digital devices such as cellphones even when those searches are incident to arrest. Considering both the need to save valuable evidence and the costs to law enforcement to obtain warrants, he carves out a special case for digital devices. These, he says, enable access to 'staggering' amounts of information, much of which may be unrelated to the arrest. He suggests a bright-line rule regarding searches of digital devices incident to arrest which he hopes the Supreme Court of Canada will adopt when it considers the *Fearon* case in the next few months.

Professor Wayne Renke strongly endorses the new Co-Management Agreement (CMA) arrived at between the Alberta Government and the Métis Settlements General Council in "*Alberta's Métis Settlements and the Co-Management Agreement*". This Agreement provides for coordination in the development of mineral resources which are beneath Métis Settlement lands in Alberta. A vast improvement over the previous 1990 CMA, the new CMA ensures that decisions about posting lands to industry for mineral development, negotiation with bidders and acceptance of bids, and the right to receive a share of the portion of production (Overriding Royalty) or the transfer of a working interest to the Métis Settlements General Council and Affected Settlement Council (Participation Option) are multi-party, consultative processes which promote Métis Settlement self-sufficiency built on Land and Culture.

In "Administrative Law, Judicial Deference, and the *Charter",* **Professor Matthew Lewans** critically examines judicial deference toward administrative decisions where *Charter* issues are raised. Traditionally, he notes, courts were quick to substitute their decisions for those of administrative decision makers in cases that dealt with constitutional issues. Since *Doré v Barreau du Québec,* however, judges must relinquish their claim to be the exclusive arbiters of 'correct' interpretations of the *Charter* and instead use a 'reasonableness' standard which incorporates a degree of respect for administrative balancing of public policy and *Charter* values. While this is a welcome development, Lewans warns that further doctrinal reform is required. He suggests that *Doré*'s full potential has yet to be realized.

Kirk Lambrecht Q.C. examines the Alberta Energy Regulator (AER) — an administrative body recently established in Alberta as a successor to the Energy Resources Conservation Board (ERCB) — and its capacity to consider questions of constitutional law. He makes a strong case for the AER as a tribunal that has the power to, and indeed should consider questions of constitutional law but whose capacity to do so has been narrowly limited by its interpretation of the *Administrative Procedures and Jurisdiction Act (APJA).* Given the relevance of constitutional law to the issues which must be considered by the Alberta Energy Regulator, Lambrecht foresees litigation on this issue.

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