Introduction

This Special Issue of the *Forum* is a compelling compilation of papers presented at the Annual Constitutional Symposium organized by the Centre for Constitutional Studies in October 2015.

The issue begins with a philosophical perspective on the **Trinity Western Law School** debate from Professor Kent Donlevy: should students from that law school be accredited by law societies across the country given the *Community Covenant* they are required to sign which requires that they "abstain from sexual intimacy that violates the sacredness of marriage between a man and a woman"? Citing Isaiah Berlin on positive and negative rights, Donlevy argues it is important to protect the right of communities — even those with whose beliefs we vehemently disagree – to exist in Canada. The state of tension created by conflicting values is necessary, he claims, as is the collective, communal exercise of religious rights in our community of communities, even with the just claims for equality demanded by our *Charter or Rights and Freedoms* and human rights codes. These arguments will continue to be relevant if and until the Supreme Court weighs in on them and beyond.

The Donlevy piece is followed by two articles on the Supreme Court's labour trilogy in 2015, notably on the right to strike decision in ***Saskatchewan Federation of Labour*** (*SFL*) case. Predictably, Craig Neuman, who represents employers, and Ritu Khullar and Vanessa Cosco who represent unions in labour disputes, strongly disagree about the outcome of that case. Neuman argues that the Court has usurped the role of the legislature by venturing into the policy arena, incorrectly interpreted section 2(d) of the *Charter* by enshrining activities of associations of employees and has produced destabilization in the law. Khullar and Cosco argue that by recognizing the right to strike the Court finally entrenched the 'powerhouse' of collective bargaining but did so in a measured manner. And they commend the Court for re-animating the values of personal autonomy, self-fulfillment and dignity that underlie the *Charter* in its trilogy of cases. Both articles provide an excellent review of the law leading to the 2015 decisions, and give compelling arguments in support of their opposing positions.

The article by professors Jennifer Koshan and Jonnette Watson Hamilton was not presented at our 2015 Symposium but fit neatly into the Symposium's theme of reviewing constitutional developments of the past year. Koshan and Hamilton examine the Supreme Court's decision in ***Taypotat*** — the only section 15(1) decision of the Court with an Aboriginal government as respondent — on the basis that it was a missed opportunity to apply section 25 of the *Charter*. **Section 25** requires *Charter* rights to be interpreted so as not to derogate from Aboriginal, treaty or other rights. Theirs is a strong plea to litigators and the courts to develop an approach to this little-used section that is long overdue.

Margaret Unsworth QC, Director of the Constitutional Law Branch with Alberta Justice and Solicitor General, was counsel on behalf of the government in the now infamous ***Caron and Boutet*** case about whether there exists a constitutional obligation on the Province of Alberta to publish its laws in French. While the government's arguments prevailed at the Supreme Court, Unsworth regrets the missed opportunities by the Court to provide guidance on key constitutional matters such as interpretive principles in relation to the Constitution, Parliamentary supremacy, the application of unwritten constitutional principles and the natural limits of those principles especially as they are informed by historical evidence, to

name a few. She also provides a thorough review of salient points made in each of the decisions in this case beginning in the Provincial Court in 2008 and ending at the Supreme Court of Canada in 2015.

Keltie Lambert, an Edmonton lawyer who specializes in Indigenous issues provides a cogent summary and analysis of the decision in ***Daniels v Canada***, a case that asked whether the term 'Indians' in section 91(24)of the *Constitution Act, 1867* includes Métis and non-status Indians. In that case, to the relief of many Métis and non-status Indians, the Court found "there is no need to delineate which mixed-ancestry communities are Métis and which are non-status Indians. They are all 'Indians" under section 91(24) by virtue of the fact that they are all Aboriginal peoples." Lambert provides observations of the case from her unique perspective as council for the Métis Settlements in Alberta.

The final article in this issue is an analysis of ***Trial Lawyers of British Columbia*** - an access to justice case where British Columbia's hearing-fee scheme was found to be unconstitutional because of the exemption for 'impoverished' litigants. The exemption violates the right of access to superior courts protected by section 96 of the *Constitution Act, 1867,* as informed by the unwritten principle of the rule of law. Gareth Morley who was co-counsel for the Attorney General of British Columbia at the Supreme Court of Canada in the case notes that, as a result of this case, those interested in civil procedure and its possible reform can no longer ignore the Constitution. But, he also notes, the systemic problems with access to justice that riddle our civil litigation system are unlikely to improve despite this decision.

Constitutional Forum 25.2 includes interesting, informative, well-written articles on recent constitutional cases and developments. We thank the authors for their participation in the 2015 Symposium and for the additional work they did in submitting these articles. Well worth reading!

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Editor