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<p>CONSTITUTIONAL LAW OF CANADA Hogg Release No. 1, July 2025</p>
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This publication is the definitive work on Canadian constitutional law, written by a respected constitutional law scholar. All aspects of the subject are thoroughly analyzed, including: basic constitutional concepts, distribution of powers, civil liberties and practice-related issues.

This release features updates to the case law and commentary in Chapters 1 (Sources), 3 (Independence), 4 (Amendment), 7 (Courts), 8 (Supreme Court of Canada), 9 (Responsible Government), 10 (The Crown), 12 (Parliamentary Sovereignty), 13 (Extraterritorial Competence), 14 (Delegation), 15 (Judicial Review on Federal Grounds), 16 (Paramountcy), 17 (Peace, Order, and Good Governance), 25 (Bankruptcy and Insolvency), 27 (The Family), 29 (Public Property), 32 (Health), 35 (Canadian Bill of Rights), 36 (Charter of Rights), 37 (Application of Charter), 38 (Limitation of Rights), 39 (Override of Rights), 40 (Enforcement of Rights), 43 (Expression), 44 (Assembly and Association), 46 (Mobility), 47 (Fundamental Justice), 48 (Unreasonable Search or Seizure), 49 (Arbitrary Detention or Imprisonment), 50 (Rights on Arrest or Detention), 51 (Rights on Being Charged), 53 (Cruel and Unusual Punishment), 55 (Equality), 56 (Language), 57 (Education), 58 (Effect of Unconstitutional Law), and 59 (Procedure).

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Case Law Highlights

- **THE CROWN—FEDERAL COMPLICATIONS—FEDERAL LAWS BINDING PROVINCIAL CROWN**—Courts have shown no hesitation in holding that federal laws apply to the provincial Crown. In *Re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 CarswellQue 353 (S.C.C.) — a decision dealing with federal legislation relating to child and family services for Indigenous children — the Supreme Court indicated it was “trite law that Parliament can bind the Crown in right of the provinces”.
- **ENFORCEMENT OF RIGHTS—ADMINISTRATIVE TRIBUNALS—WITH POWER TO DECIDE QUESTIONS OF LAW**—The standard of review generally remains correctness when a superior court reviews the decision of an administrative tribunal addressing the constitutionality of legislation, on Charter or any other constitutional grounds. In *Société des casinos du Québec v. Association des cadres de la Société des casinos du Québec*, 2024 CarswellQue 3222 (S.C.C.), the Supreme Court confirmed that the correctness standard applies to questions of mixed fact and law that arise in connection with a constitutional challenge, but “[a] reviewing court must show deference to findings of pure fact that can be isolated from the constitutional analysis”.
- **EXPRESSION—ACCESS TO GOVERNMENT AND GOVERNMENT DOCUMENTS—ACCESS TO GOVERNMENT DOCUMENTS**—In *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2024 CarswellOnt 1028 (S.C.C.), the Supreme Court held that mandate letters from the Premier of Ontario to cabinet ministers were exempt from disclosure under Ontario’s freedom of information statute due to statutorily recognized privilege for cabinet deliberations.
- **UNREASONABLE SEARCH OR SEIZURE—ELECTRONIC SURVEILLANCE—THIRD PARTY SURVEILLANCE**—The use of an arrested person’s seized cell phone by the police to impersonate the arrested person in a text message conversation about a drug transaction is not an interception under Part VI of the *Criminal Code* because a cell phone is not the kind of “intrusive surveillance technology” that triggers the provisions: *R. v. Campbell*, 2024 CarswellOnt 18868 (S.C.C.).
- **LANGUAGE—LANGUAGE OF COURTS—LANGUAGE OF PROCEEDINGS**—Section 530 of the *Criminal Code* confers on an accused in a criminal trial the right to a judge, or a judge and jury, “who speak the official language of Canada that is the language of the accused or, if the circumstances warrant, who speak both official languages of Canada”. In *R. v. Tayo Tompouba*, 2024 CarswellBC 1219 (S.C.C.), the Supreme Court held that s. 530(3) imposes an informational duty on the judge before whom an accused first appears to ensure that the accused is informed of the right conferred by that section. A breach of this informational duty is an error of law that taints the trial court’s judgment and gives rise to a rebuttable presumption that the right was violated. The appropriate remedy for a violation of this right is generally a new trial.

In Memory of Peter W. Hogg CC, QC, FRSC

With great sadness, we mark the passing of Peter W. Hogg, a pillar in the legal community and leading authority on Canadian constitutional law. He was Scholar-in-Residence at Blakes for many years, providing advice and counsel to government, served as counsel for the Government of Canada in several prominent cases, including the Same-Sex Marriage Reference in 2004. We greatly cherish our five decades' long association with Peter as author of Constitutional Law of Canada. Peter's great warmth and intelligence will be missed.