

# CBA CONSTITUTIONAL AND HUMAN RIGHTS CONFERENCE

APRIL 21, 2017 | OTTAWA (ON)

*Making Constitutional History: Constitutional Rights Litigation*

## April 21, 2017

**8:30 – 9:00**     **Registration & Breakfast**

**9:00 – 9:05**     **Opening Remarks**

**Conference Chair:** *Arthur M. Grant, Partner, Grant Kovacs Norell (Vancouver)*

**9:05 – 10:30**     **Best Practices for Constitutional Rights Litigation**

This session will address the key practical aspects of litigating a constitutional rights case in courts of first instance and appellate courts, including the Supreme Court of Canada (SCC). The panelists will discuss: how to select the right case for a constitutional challenge; procedural and evidentiary issues common in constitutional cases; the importance of creating the proper record; common mistakes in litigating constitutional rights cases and how to avoid them; and success stories of constitutional litigators. This session will offer practical considerations for litigants and interveners, and for preparing a potential constitutional rights case, bearing in mind the ultimate potential for an SCC appeal.

**Moderator:**     **Allan Damer**, *Legal Counsel, Allan W Damer Professional Corporation (Edmonton)*

**Speakers:**     **Ranjan Agarwal**, *Partner, Bennett Jones LLP (Toronto)*

**Raj Anand**, *Partner, WeirFoulds LLP (Toronto)*

**Karen Horsman Q.C.**, *Legal Counsel, BC Ministry of Justice and Adjunct Professor, Peter A. Allard School of Law, University of British Columbia, (Vancouver)*

**Anne Turley**, *Senior General Counsel, Justice Canada (Ottawa)*

**10:30 – 10:45**     **Health Break**



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### **10:45 – 12:15 Litigating Social Change Through the *Charter***

This session will examine how Canadian courts have interpreted the rights and freedoms expressly protected by the *Charter* so as to extend its protection to areas such as privacy, collective bargaining, labour strikes, personal safety in the employment context, and access to health care. The panelists will discuss the resulting shifts in Canada's social fabric. They will also examine the implications of recent constitutional cases, such as *Carter* and *Bedford*, and how these results were achieved.

**Moderator:** **Christian Whalen**, *Senior Legal Counsel, Office of the Child and Youth Advocate, Province of New Brunswick (Fredericton)*

**Speakers:** **Robert Frater, Q.C.**, *Chief General Counsel, Justice Canada (Ottawa)*  
**Julius Grey**, *Grey Casgrain s.e.n.c. (Montreal)*  
**Nitya Iyer, Q.C.**, *Partner, Lovett Westmacott (Vancouver)*  
**Cheryl Milne**, *Director, Asper Centre for Constitutional Rights, University of Toronto (Toronto)*

### **12:15 - 13:15 Lunch and Keynote Speaker**

As a former litigator who appeared many times in front of the SCC, the Honourable Suzanne Côté will provide a perspective from the Bench on the current state of constitutional and human rights litigation in Canada.

**Speaker:** **The Honourable Madam Justice Suzanne Côté**, *Supreme Court of Canada*

### **13:15– 14:45 Collective Rights – Aboriginal, Linguistic and Educational Rights Under Canada's Constitution**

This session will consider the litigation of collective rights. Unlike some countries, Canada has constitutionalized certain rights for particular groups or collectivities. Practitioners will expound on how the litigation of collective rights –, such as aboriginal, linguistic or educational rights – differs from constitutional challenges based on individual rights. They will also explore the future implications of such cases on the constitutional structure of Canada.



**Moderator:** **Veronica L. Jackson**, *Senior Legal Counsel, BC Ministry of Justice and adjunct Professor, University of Victoria, Faculty of Law* (Victoria)

**Speakers:** **David Nahwegahbow**, *Partner, Nahwegahbow, Corbiere Genoodmagejig Barristers & Solicitors* (Rama)  
**Mark Power**, *Partner, Juristes Power Law* (Ottawa)  
**Paul Yearwood**, *Supervising Counsel, Ministry of Justice* (Victoria)

**14:45 – 15:00 Health Break**

**15:00 – 16:30 Beyond 2017: The Future of Constitutional Rights in Canada**

Where will litigators be taking Canada's constitutional rights in the future? We have already seen lawyers use the *Charter* for a variety of social changes, whether it be same sex marriage or medical assistance in dying. What forces of change will provide the new interpretive paradigm for tomorrow? As the Baby Boom generation ages and as climate change looms ever larger, and as the Internet shrinks our planet and artificial intelligence emerges on the horizon, what new and presently unforeseen fields of constitutional rights litigation will unfold in the next decades? Some of Canada's most creative constitutional scholars will look into their crystal balls and plant the seeds of future constitutional challenges.

**Moderator:** **Patricia Paradis**, *Executive Director, Centre for Constitutional Studies, University of Alberta, Faculty of Law* (Edmonton)

**Speakers:** **Aimée Craft**, *Assistant Professor, University of Manitoba, Faculty of Law* (Winnipeg)  
**Pierre Foucher**, *Professor, University of Ottawa, Faculty of Law* (Ottawa)  
**Sarah Lugtig**, *Crown Counsel, Manitoba Justice and Director of Experiential Learning, University of Manitoba, Faculty of Law* (Winnipeg)

*\*\*Topics and speakers subject to change*



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