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Articles

[The 22nd Annual McDonald Lecture in Constitutional Studies: Canada's Response to Terrorism](#)

The Honourable Frank Iacobucci, C.C., Q.C.

Abstract - N/A

[Back to Basics: A Critical Look at the *Irwin Toy* Framework for Freedom of Expression](#)

Robin Elliot

Abstract

The author argues that the analytical framework that the Supreme Court of Canada developed in 1989 in *Irwin Toy Ltd v Quebec* to resolve freedom of expression cases under s 2(b) of the Charter, and that the Court still uses today, is seriously flawed. He focuses on the two main elements of that framework—the exceedingly broad understanding of freedom of expression on which it is based and the complex set of rules it prescribes for finding an infringement on freedom of expression. His concerns in relation to those elements are that: (1) the meaning the Court has given to freedom of expression for the purposes of s 2(b) lacks a solid justificatory basis, ignores general interpretive principles the Court has adopted in relation to the Charter, encourages pointless and wasteful litigation, and fails to appreciate the symbolic function that an instrument like the Charter performs; and (2) the roadmap the Court prescribes for determining whether or not governmental action infringes on freedom of expression is inconsistent with the Court's own prior jurisprudence on this feature of Charter analysis, lacks logical coherence, misapplies a feature of American free speech jurisprudence of questionable merit, and is incomplete.

[Towards a Civil Republican Theory of Canadian Constitutional Law](#)

Hoi Kong

Abstract

Civic republican theory occupies an important place in the contemporary public law literature of some jurisdictions but has not significantly influenced Canadian constitutional theory. Moreover, and again unlike other jurisdictions, there have been few theoretical accounts that provide a unified view of Canadian constitutional law rather than focusing on specific topics (i.e., particular rights) or domains (i.e., federalism or rights). / is essay begins to fill these gaps in the literature. I will argue that civic republicanism fits and justifies a broad range of domains of Canadian constitutional law. I build my argument on what is considered by many to be a core feature of civic republicanism, namely, the principle of non-domination, and I offer arguments that are consistent with a particular strand of

civic republican theory. This essay will focus that version of the theory on rule-of-law issues and on questions of individual rights. In Part I, I will distinguish civic republican from liberal theories of law. In Part II, I will argue that the concept of the rule of law, as it has been developed in Canada, evidences core features of civic republicanism. In Part III, I will argue that some individual rights doctrines also manifest essential characteristics of civic republican theory, including solicitude for the capacity of citizens to engage on equal terms with one another in public debates, and concern about the vulnerability of citizens to arbitrary state action.

Book Review

Book Review of Dennis Baker

[*Theory as Therapy: Not Quite Supreme: The Courts and Coordinate Constitutional Interpretation*](#)

Ken Dickerson