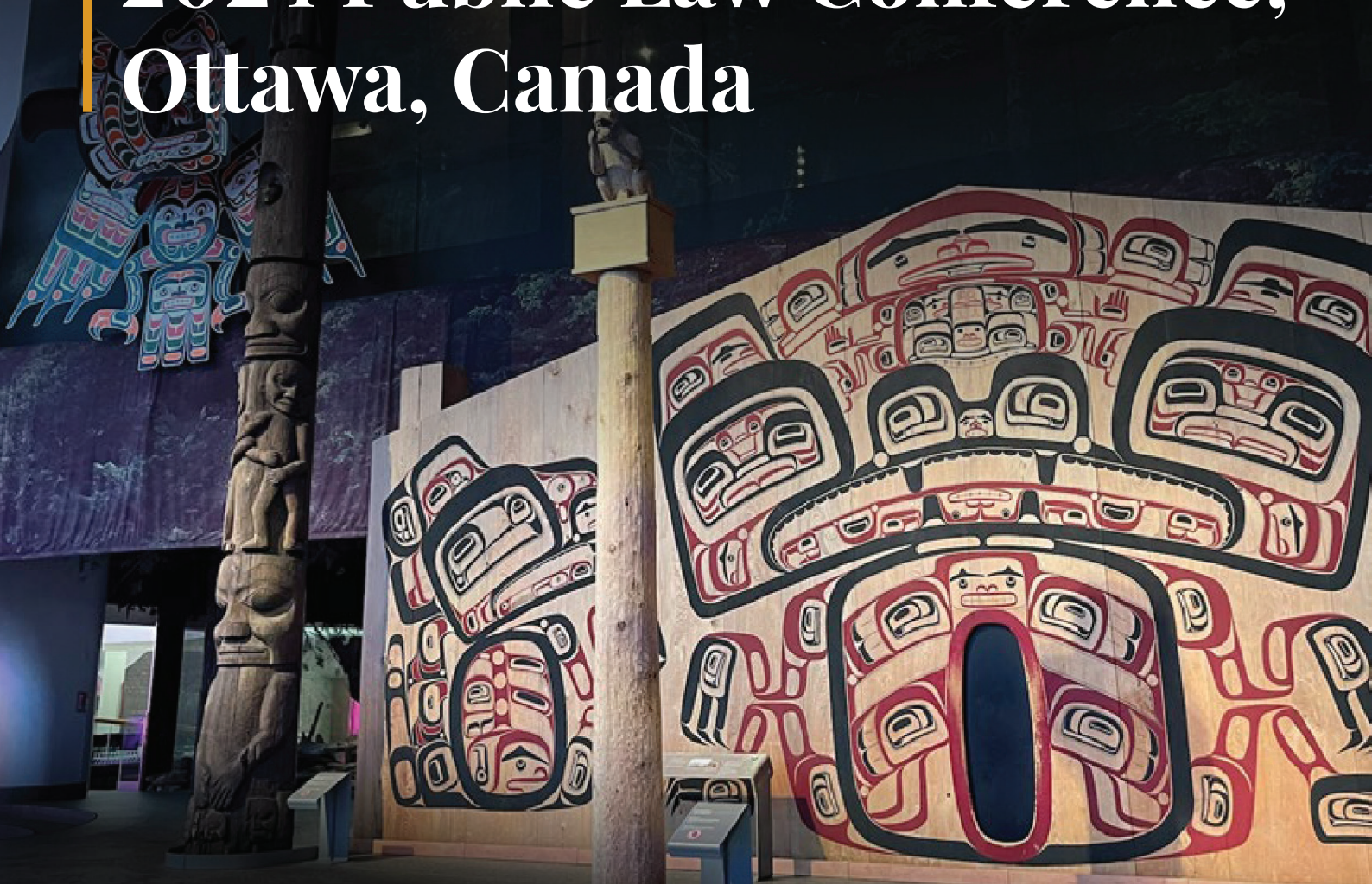


2024 Public Law Conference, Ottawa, Canada



Fiona Roughley SC
Banco Chambers



Celia Winnett
Sixth Floor Selborne Wentworth Chambers

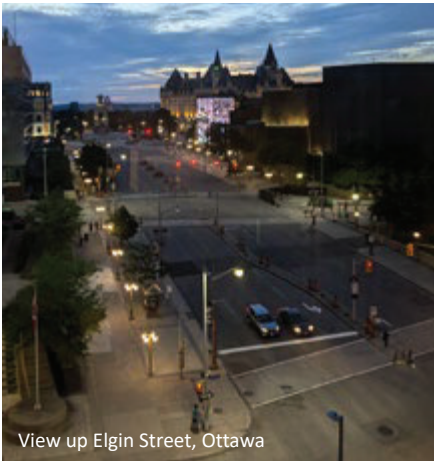
For some years, the biennial Public Law Conference, established by academics at Cambridge University and the University of Melbourne, has boasted an impressive array of speakers and participants drawn from academia, the Bench and the wider profession.

From 2 to 5 July 2024, it was hosted by the University of Ottawa in Ontario, Canada. We attended for the brain food and the Canadian sunshine and hospitality on offer.

While the participants' home jurisdictions share a similar legal heritage in terms of constitutional law, common law and administrative law, there are also notable differences that define our separate traditions. The conference allowed us to reflect on the shared legal heritage and understand the different directions in which the national parliaments and courts have taken our respective countries. It also provided an opportunity to draw connections between ideas and between participants.

Presently, the Canadian political and legal branches are experimenting with ways to recognise First Nations laws and traditions within the Canadian legal system. Canada is an apt case study for such endeavours, given its long history of blending common law and civil law traditions as well as English and French-speaking populations and their cultures. In that spirit, the conference opened with a reception at the Supreme Court of Canada, hosted by Justice Sheilah Martin. Like the other Canadians we met, Justice Martin greeted delegates in French and English with a warm smile. She remarked that the task of renovating and maintaining the Supreme Court building was a good metaphor for the broader development of the law taking place within that institution and others.

Day one of the conference featured sessions on the themes of 'fourth branch' institutions, Indigenous legal traditions, proportionality and justification, emergencies and national security, and



View up Elgin Street, Ottawa



From left: Celia Winnett (Sixth Floor Selborne Wentworth Chambers), Fiona Roughley SC (Banco Chambers), Lael Weis (University of Melbourne) and Janina Boughey (University of New South Wales) at the Supreme Court of Canada

constitutional reform. In one session, a South African academic explained different approaches over time taken by the Constitutional Court of South Africa to proportionality assessments. Question time involved a judge of the Constitutional Court of South Africa putting up his hand from the audience to explain the context of the apartheid-era laws that the court faced in its early years. It was a demonstration, to those of us who like to marry judicial outcomes and legal norms with historical experience, of the power of context to shape perspectives.

Day two involved sessions on judicial powers and methods, human rights legislation, constitutional interpretation, administrative powers and oversight, and constitutional values. Our pick was the plenary panel session, ‘The Executive and Democracy’. Shalene Curtis-Micallef, Deputy Minister of Justice and Deputy Attorney-General of Canada, moderated papers delivered by Justice Michelle Gordon of the High Court of Australia concerning citizenship revocation and the separation of powers and Professor Janet McLean of the University of Auckland on the constitutional provenance of the duties of public servants, among others. We look forward to Professor

McLean’s next book on the topic. Expect an interrogation of Robodebt and the duties of government lawyers.

Day three started with a panel discussion between superior court justices of New Zealand and South Africa concerning transitional justice and the interweaving of Indigenous law into national systems, moderated by the Chief Justice of Samoa. Professor Denis Baranger of the Université Paris-Panthéon-Assas also offered comparative law observations on ‘British Public Law through French Eyes’. Sessions on parliamentary privileges and conventions, public law remedies and ouster clauses rounded off the day.

Amid the high points of legal principle was one unforgettable cultural moment. To explain it, we start with some context. The Grand Hall of the Canadian Museum of History (pictured opposite) is a space designed by Indigenous architect Douglas Cardinal. The hall is shaped like an enormous canoe, within which totem poles, representing First Nations from across Canada, border an expanse of glass that overlooks the Ottawa River. This was the setting for the conference’s gala dinner. After an introduction from Justice Andromache Karakatsanis of the Supreme Court of

Canada, Jeremy Dutcher performed. Dutcher is a young operatic tenor and composer, and Wolastoqiyik member of the Tobique First Nation in New Brunswick, and it was a performance steeped in history and trauma and the national conversation of reconciliation.

It is worth relaying here the background to Jeremy’s performance. In the early 20th century, the Canadian Museum of History made recordings of Dutcher’s ancestors singing traditional songs. He travelled to the museum to hear these songs. He now loops the recordings into his own compositions for piano and voice (singing in the Wolastoqey language). Hearing this incredible talent interweave old and new and his expression of both historical wrong and present hope in the space that has preserved his ancestors’ songs for over a century, provided a tangible reminder of the mandate and challenge of public law: to wield state power in a manner that recognises and does right by all members of the community.

We left the conference with new ideas, colleagues and perspectives – and the faintest blush of a tan from our runs along the Rideau Canal. The next conference will be in South Africa in mid-2026. **BN**



Photos: Art Visuals