

CONSTITUTIONAL AND PUBLIC LAW IN CANADA FALL 2019

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Contents

Course Description.....	3
Course Objectives.....	3
Optional Materials and Texts.....	3
Class Format.....	3
Course Evaluation – Overview	4
Course Evaluation – Details	4
Case Decisions (20% each), due September 24, October 23 and November 12, 2018.	4
Final Exam (40%), due December Exam Period	4
Weekly Course Schedule and Required Readings	5
Week 1 – September 03, 2019	5
Week 2 – September 09, 2019 – The Judiciary	5
Week 3 – September 16, 2019 – The Constitution	5
Week 4 – September 23, 2019 – The State and State Powers	6
Week 5 – September 30, 2019 – Criminal Law	6
Week 6 – October 07, 2019 – Criminal Law	6
Week 7 – October 14-18, 2019 – Reading Week	7
Week 8 – October 21, 2019 – Administrative Law	7
Week 9 – October 28, 2019 – Administrative Law	7
Week 10 – November 04, 2019 – Constitutional Law	7
Week 11 – November 11, 2019 – Constitutional Law	8
Week 12 – November 18, 2019 – Constitutional Law	8
Week 13 – November 25, 2019 – Constitutional Law	8
Week 14 – December 02, 2019 – Exam Review	9
Course Policies	9
Submission of Assignments.....	9

Grades.....	9
Late Assignments	9
Absences, Missed Work, Illness	10
Avenue to Learn	11
Turnitin.com.....	11
Academic Accommodation for Religious, Indigenous or Spiritual Observances (RISO)	11
University Policies	11
Academic Integrity Statement.....	11
Academic Accommodation of Students with Disabilities.....	12
Faculty of Social Sciences E-mail Communication Policy	12
Course Modification	12

Course Description

The course is intended to give students a greater understanding of the interaction between politics, the courts and the law and to provide insight into some of the legal and political limitations faced by governments in attempting to make public policy in Canada.

The course explores how the relationship between Canadians and the Canadian state and governments are governed by three bodies of public law – administrative, criminal and constitutional. It will examine the historical, philosophical and theoretical aspects underlying constitutions, the rule of law and an independent judiciary as a base to an extensive investigation of the development, interpretation and evolution of the Canadian Constitution and Canadian public law. This preliminary focus will set the stage for a more intensive review of the major contemporary issues in Canadian public law including: delegated authority and administrative tribunals; criminal law, the division of powers and federalism; the role of the Courts, judicial interpretation of the Constitution and judicial activism; aboriginal/indigenous law and recent challenges to the Constitution.

Course Objectives

By the end of the course students should be able to:

- describe the structure of the levels of government in Canada, and the constituent elements of the Canadian Constitution;
- explain the role and functioning of the judicial and quasi-judicial administrative processes in the country;
- recognize what level of Court or tribunal is appropriate for adjudication of a particular issue;
- analyze current political and public policy issues from a legal and civil rights perspective;
- apply the knowledge they have gained to generate arguments on either side of an issue and appraise the validity and legitimacy of arguments advanced in public by politicians and the media from a constitutional law perspective; and,
- present arguments and case summaries in written format in a brief, clear and concise manner supported by evidence.

Optional Materials and Texts

Various readings (as detailed below) available through the McMaster University libraries or on GoogleScholar

Class Format

The course is scheduled is scheduled for three one-hour sessions per week.

Two hours of each week (Tuesday and Wednesday) will be conducted in an interactive lecture format by the instructor with students having the opportunity to ask questions

concerning the information being provided to them. The third hour of classes, held on some Fridays throughout the semester, will consist of additional time for lecture material as well as for quasi-tutorial sessions to review hypothetical fact scenarios and cases to reinforce and apply lecture material and to assist with the completion of course assignments or to undertake other course related activities.

In addition to formal class time, students are invited to meet with the instructor during regular office hours or by appointment to discuss course content or any other concerns. description of course.

Course Evaluation – Overview

1. Three Case Decisions - 20% each, due September 24, October 23 and November 12, 2019.
2. Final Exam – 40%, due December Exam Period

Course Evaluation – Details

Case Decisions (20% each), due September 24, October 23 and November 12, 2018.

Students will submit three (3) two to three (2-3) page maximum papers as outlined on the specific assignment instructions and based on a hypothetical set of facts associated with a Supreme Court of Canada case dealing with one of the four major components of the course – judicial independence or the rule of law, administrative law, criminal law and constitutional law. Students will be asked to write a judicial decision of their own concerning a hypothetical set of facts with an application of the appropriate law.

Students may write the paper solely or jointly with one other student in the class. Unless agreed to in advance by all students in the group and the instructor, students will both receive the same grade for the assignment and both are responsible for ensuring that the assignment conforms to the Academic Integrity Policy.

PLEASE NOTE THAT THE DUE DATES LISTED IN OUTLINE ARE TENTATIVE AND TIMING OF ACTUAL DUE DATES WILL DEPEND ON COVERAGE OF COURSE MATERIALS. Students will be provided with the details of each particular assignment during class at least one week prior to the assignment being due.

Final Exam (40%), due December Exam Period

The final exam will follow a similar format to the assignments, but will be based on all materials covered throughout the course unless otherwise indicated, although it will be more heavily weighted to issues arising in the final month of the course.

Weekly Course Schedule and Required Readings

Week 1 – September 03, 2019

September 03, 2019 – Introduction and Pick Up of Course Outline

Readings: None

September 04, 2019 – What is Public Law?

Readings: None

September 06, 2019 – Defining the Scope of Constitutional and Public Law?

Readings: None

Week 2 – September 09, 2019 – The Judiciary

September 10, 2019 – The Rule of Law

Readings: Hogg, Peter and Cara F. Zwibel. 2005. "The Rule of Law in the Supreme Court of Canada" *University of Toronto Law Journal*, 55(3), 715-732.

September 11, 2019 – Judicial Independence

Readings: None

September 13, 2019 – Judicial Review and Structure

Readings: None

Notes: Assignment 1 to be distributed in class this week

Week 3 – September 16, 2019 – The Constitution

September 17, 2019 – Sources of the Constitution

Readings: Lagasse, Phillip. 2012. "Parliamentary and judicial ambivalence toward executive prerogative powers in Canada" *Canadian Public Administration* 55(2), 157-180.

September 18, 2019 – Sources of the Constitution

Readings:

September 20, 2019 – Hypothetical Case Study

Readings: Previous Assignment Posted on Avenue

Week 4 – September 23, 2019 – The State and State Powers

September 24, 2019 – The Legislative Branch of Government

Readings: None

Notes: Assignment 1 Due In Class

September 25, 2019 – The Legislative and Executive Branches of Government

Readings: Malloy, Jonathon. 2004. "The Executive and Parliament in Canada" *Journal of Legislative Studies* 10(2-3), 206-217.

September 27, 2019 – The Executive Branch of Government

Readings: None

Week 5 – September 30, 2019 – Criminal Law

October 01, 2019 – History and Actus Reus

Readings: Nebitt, Michael and Dana Hagg. 2019. "Terrorism Prosecutions in Canada" Elucidating the Elements of the Offences" *Alberta Law Review* forthcoming.

October 02, 2019 – Actus Reus and Mens Rea

Readings:

October 04, 2019 – Mens Rea and Criminal Defences

Readings: None

Week 6 – October 07, 2019 – Criminal Law

October 08, 2019 – Criminal Defences continued

Readings: Lawrence, Michelle S. 2017. "From Defect to Dangerous: Has the Door Opened for Recognition of an Addiction-Based Defence in Canadian Criminal Law?" *Canadian Journal of Criminology and Criminal Justice* 59(4), 572-582.

October 09, 2019 – Criminal Defences continued

Readings: None

October 11, 2019 – Hypothetical Case Study

Readings: Previous Assignment Posted on Avenue

Notes: Assignment 2 to be distributed in class this week.

Week 7 – October 14-18, 2019 – Reading Week

No Classes

Week 8 – October 21, 2019 – Administrative Law

October 22, 2019 – History and Background

Readings: Ratushny, Ed. 1987. "What are administrative tribunals? The pursuit of uniformity in diversity" *Canadian Public Administration* 30(1), 1-13.

October 23, 2019 – Natural Justice and Procedural Review of Administrative Tribunals

Readings: None

Notes: Assignment 2 Due in Class

October 25, 2019 – Natural Justice Rights – *Audi Alterum Partum* and Bias

Readings: None

Week 9 – October 28, 2019 – Administrative Law

October 29, 2019 – Substantive Review of Administrative Tribunals

Readings: Taucar, Christopher Edward. 2010. "Standards of judicial review of administrative bodies: The consideration of citizen participation" *Canadian Public Administration* 53(1), 67-86.

October 30, 2019 – Substantive Review Continued

Readings: None

November 01, 2019 – Hypothetical Case Study

Readings: Previous assignment posted on Avenue

Notes: Assignment 3 to be distributed in class this week.

Week 10 – November 04, 2019 – Constitutional Law

November 05, 2019 – Judicial Federalism and the JCPC

Readings: Hogg, Peter and Wade K. Wright. 2005. "Canadian Federalism, the Privy Council and the Supreme Court: Reflections on the Debate About Canadian Federalism" *University of British Columbia Law Review* 38(2), 329-352.

November 06, 2019 - The JCPC and Interpretation of the Trade and Commerce Power

Readings: None

November 08, 2019 - The JCPC, Trade and Commerce and Peace, Order and Good Government

Readings: None

Week 11 – November 11, 2019 – Constitutional Law

November 12, 2019 – The JCPC, POGG and the Gap Doctrine

Readings: None

Notes: Assignment 3 Due in Class

November 13, 2019 – The JCPC and the Emergency Powers Doctrine

Readings: Laskin, Bora. 1947. "Peace, Order and good government, re-examined" *Canadian Bar Review* 25, 1054-1087.

November 15, 2019 – The JCPC, POGG and the National Concern Doctrine

Readings: None

Week 12 – November 18, 2019 – Constitutional Law

November 19, 2019 – The Supreme Court of Canada and Trade and Commerce

Readings: Kukucha, Christopher. 2005. "From Kyoto to the WTO: Evaluating the Constitutional Legitimacy of the Provinces in Canadian Foreign Trade and Environmental Policy: *Canadian Journal of Political Science* 38(1), 129-152.

November 20, 2019 – The SCC, POGG and the Gap Doctrine

Readings: None

November 22, 2019 – The SCC, POGG and the Emergency Powers Doctrine

Readings: None

Week 13 – November 25, 2019 – Constitutional Law

November 26, 2019 – The SCC, POGG and the Emergency Powers Doctrine

Readings: None

November 27, 2019 – The SCC, POGG and the National Concern Doctrine

Readings: None

November 29, 2019 – The SCC, POGG and the National Concern Doctrine

Readings: None

Week 14 – December 02, 2019 – Exam Review

December 03, 2019 – Review of Previous Exam

Readings: Previous exam posted on Avenue

December 04, 2019 – Question and Answer Session

Readings: None

Course Policies

Submission of Assignments

Written assignments should be provided to the instructor, either at the beginning of class or during office hours prior to class. As a last resort, assignments can be submitted to the box outside of the political science office after hours (date-stamped for the following day) or to the Department of Political Science Office during regular business hours. Assignments will not be accepted that are slipped under the instructor's or any other door.

Papers received by e-mail or fax will not be accepted without the prior express permission of the instructor on each assignment.

Grades

Grades will be based on the McMaster University grading scale:

MARK	GRADE
90-100	A+
85-90	A
80-84	A-
77-79	B+
73-76	B
70-72	B-
67-69	C+
63-66	C
60-62	C-
57-59	D+
53-56	D
50-52	D-
0-49	F

Late Assignments

Students should make all reasonable attempts to submit papers on the due date. In the event that a legitimate extension is required, students should speak to the instructor ***in advance*** of the due date to make the appropriate arrangements for such an extension. Requests for an extension submitted by e-mail will not be considered – you must speak to the instructor in person.

Examinations and/or assignments related to this and other courses do not constitute or qualify as exceptional circumstances or legitimate excuses.

Late papers may be penalized at the rate of five percentage points per working day for each day of delay, up to a maximum of one week. After one week, the instructor may refuse to accept any late assignments in the absence of proper medical certification justifying an inability to fulfill academic requirements on a prolonged basis. Papers accepted after one week of lateness, in addition to the daily deduction, will be subject to a further deduction of one full letter grade (ie. A to B, B to C) per each week of lateness.

The instructor reserves the right to not provide any comments or feedback on papers submitted after the original deadline, whether an extension is granted or not and whether any other late penalties are applied.

Absences, Missed Work, Illness

In the event of an absence for medical or other reasons, students should review and follow the Academic Regulation in the Undergraduate Calendar “Requests for Relief for Missed Academic Term Work”.

Requests for the instructor to repeat a lecture or seminar discussion (either during office hours or at any other time) or provide access to the instructor’s lecture notes are not reasonable requests for assistance.

In the event that students are unable to attend class or complete required assignments, they should avail themselves of the MSAF policy or submit the appropriate medical or other documentation to their faculty office to support an accommodation request based on a prolonged absence. In the absence of either an MSAF or a faculty approved accommodation request, the instructor reserves the sole right to not accept any outstanding work in accordance with the late assignments policy.

If a student has submitted the appropriate documentation to their faculty and been granted an allowance for outstanding work or has received the approval of the instructor for the incomplete work, the instructor reserves the sole right to re-allocate the missed grades to other assignments.

Please note that an MSAF submission, where permitted, provides a three day extension for any assignment. In the event that students require a further period of time to submit their outstanding work, they must discuss any further extension with the instructor prior to the end of the three day MSAF extension. In the absence of a further approved extension, an assignment subject to an MSAF becomes a late submission after three days.

The filing of an MSAF does not relieve a student of the obligation to complete the outstanding assignment.

Avenue to Learn

In this course we will be using Avenue to Learn. Students should be aware that, when they access the electronic components of this course, private information such as first and last names, user names for the McMaster e-mail accounts, and program affiliation may become apparent to all other students in the same course. The available information is dependent on the technology used. Continuation in this course will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

Turnitin.com

In this course we will be using a web-based service (Turnitin.com) to reveal authenticity and ownership of student submitted work. Students will be expected to submit their work electronically either directly to Turnitin.com or via Avenue to Learn (A2L) plagiarism detection (a service supported by Turnitin.com) so it can be checked for academic dishonesty. Students who do not wish to submit their work through A2L and/or Turnitin.com must still submit an electronic and/or hardcopy to the instructor. No penalty will be assigned to a student who does not submit work to Turnitin.com or A2L. All submitted work is subject to normal verification that standards of academic integrity have been upheld (e.g., on-line search, other software, etc.). For more information please refer to the [Turnitin.com Policy](#).

Academic Accommodation for Religious, Indigenous or Spiritual Observances (RISO)

Students requiring academic accommodation based on religious, indigenous or spiritual observances should follow the procedures set out in the RISO policy. Students requiring a RISO accommodation should submit their request to their Faculty Office normally within 10 working days of the beginning of term in which they anticipate a need for accommodation or to the Registrar's Office prior to their examinations. Students should also contact their instructors as soon as possible to make alternative arrangements for classes, assignments, and tests

University Policies

Academic Integrity Statement

You are expected to exhibit honesty and use ethical behaviour in all aspects of the learning process. Academic credentials you earn are rooted in principles of honesty and academic integrity.

Academic dishonesty is to knowingly act or fail to act in a way that results or could result in unearned academic credit or advantage. This behaviour can result in serious consequences, e.g. the grade of zero on an assignment, loss of credit with a notation on the transcript (notation reads: "Grade of F assigned for academic dishonesty"), and/or suspension or expulsion from the university.

It is your responsibility to understand what constitutes academic dishonesty. For information on the various types of academic dishonesty please refer to the [Academic Integrity Policy](#).

The following illustrates only three forms of academic dishonesty

- Plagiarism, e.g. the submission of work that is not one's own or for which other credit has been obtained.
- Improper collaboration in group work.
- Copying or using unauthorized aids in tests and examinations.

Academic Accommodation of Students with Disabilities

Students who require academic accommodation must contact [Student Accessibility Services \(SAS\)](#) to make arrangements with a Program Coordinator. Academic accommodations must be arranged for each term of study. Student Accessibility Services can be contacted by phone 905-525-9140 ext. 28652 or e-mail sas@mcmaster.ca. For further information, consult McMaster University's Policy for [Academic Accommodation of Students with Disabilities](#).

Faculty of Social Sciences E-mail Communication Policy

Effective September 1, 2010, it is the policy of the Faculty of Social Sciences that all e-mail communication sent from students to instructors (including TAs), and from students to staff, must originate from the student's own McMaster University e-mail account. This policy protects confidentiality and confirms the identity of the student. It is the student's responsibility to ensure that communication is sent to the university from a McMaster account. If an instructor becomes aware that a communication has come from an alternate address, the instructor may not reply at his or her discretion.

Course Modification

The instructor and university reserve the right to modify elements of the course during the term. The university may change the dates and deadlines for any or all courses in extreme circumstances. If either type of modification becomes necessary, reasonable notice and communication with the students will be given with explanation and the opportunity to comment on changes. It is the responsibility of the student to check his/her McMaster email and course websites weekly during the term and to note any changes.