

CONSTITUTIONAL AND PUBLIC LAW

Fall 2020

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Lecture: Content – Avenue to Learn;
Q & A – Mo. & Th. 3:30-4:20,
Tu. 4:30-520.

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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.

Required Materials and Texts

- Various journal articles and other assigned readings available through McMaster University libraries.

Please note that the readings are optional and designed to provide further introduction and background to the relevant course material. They are for information only and will only be partially related to assessable course content.

Class Format

Primary course content will be delivered through on-line, pre-recorded lectures available on Avenue to Learn.

In addition to the pre-recorded lectures, the class is scheduled for three one-hour instructor led sessions per week. Two of those sessions (Monday and Thursday) will be used to clarify and answer any questions arising out of lecture content and will be held every week.

The third hour (Tuesday) will be used to clarify and answer questions relating to course assignments. These sessions will only occur when there is an assignment assigned and students will be notified on Avenue to Learn and by email through Mosaic of the scheduling of these additional sessions.

As the course content and assessable material will be delivered through pre-recorded lectures, there is no requirement that students keep current with the course schedule. However, the instructor led sessions will follow the course schedule and will be dedicated to clarifying course materials related to the topics associated with each specific week as outlined on the course outline. The instructor led sessions will not re-visit course content that has been previously discussed and is no longer current with the course schedule.

In addition, assessments will also be based on and graded on the course material relevant to the assignment as set out in the weekly course schedule.

Course Evaluation – Overview

1. Case Decision Assignments	25% each	October 05, 2020 November 09, 2020 November 30, 2020
2. Final Exam	25%	December Exam Period

Course Evaluation – Details

Case Decision Assignments (25% each), due October 05, 2020, November 09, 2020 and November 30, 2020.

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 as set out in the lecture content.

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.

Final Take Home Exam (25%), due December Exam Period

The final exam will follow a similar format to the assignments, but will be based on the materials in the last section of the course. The take home will be released in accordance with the date scheduled by the registrar for the final exam and will provide students with a minimum of seven days to complete the exam.

Weekly Course Schedule and Required Readings

Week 1 – September 07, 2020

What is Public Law?

Readings:

None

THE ACTORS AND THE RULES

Week 2 – September 14, 2020

The Rule of Law, Judicial Independence and the Judiciary

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.

Note: Assignment 1 to be released on Avenue on September 17, 2020.

Week 3 – September 21, 2020

The Constitution

Readings:

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

Note: Assignment review class to be held via Zoom on Tuesday, September 22, 2020.

Week 4 – September 28, 2020

The Government – the Legislative and Executive Branches

Readings:

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

CONSTITUTIONAL LAW

Week 5 – October 05, 2020

Judicial Federalism and the JCPC

Readings:

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

Note: Assignment 1 due on October 05, 2020.

Week 6 – October 12, 2020

Reading Week

Readings:

None

Week 7 – October 19, 2020

The Evolution of Judicial Federalism from the JCPC to the SCC

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.

Week 8 – October 26, 2020

The SCC and POGG

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.

Note: Assignment 2 to be released on Avenue on October 29, 2020.

Week 9 – November 02, 2020

Aboriginal/Indigenous Law

Readings:

Sossin, Lorne. 2010. "The Duty to Consult and Accommodate: Procedural Justice as Aboriginal Rights" *Canadian Journal of Administrative Law & Practice* 23, 93-113.

Note: Assignment review class to be held via Zoom on Tuesday, November 03, 2020.

PUBLIC LAW

Week 10 – November 09, 2020

Administrative Law – Procedural Review

Readings:

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

Note: Assignment 2 due on November 09, 2020.

Week 11 – November 16, 2020

Administrative Law – Substantive Review

Readings:

Taucar, Christopher Edward. 2010. "Standards of judicial review of administrative bodies: The consideration of citizen participation" *Canadian Public Administration* 53(1), 67-86. Note: Primary Research Evidence Summary Due in class.

Note: Assignment 3 to be released on Avenue on November 19, 2020.

Week 12 – November 23, 2020

Criminal Law – History, the Guilty Act/Actus Reus and the Guilty Mind/Mens Rea

Readings:

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

Note: Assignment review class to be held via Zoom on Tuesday, November 24, 2020.

Week 13 – November 30, 2020

Criminal Law – Defences and Sentencing

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.

Note: Assignment 3 due on November 30, 2020.

Week 14 – December 07, 2020

Conclusion and Exam Preparation

Readings:

None.

Course Policies

Submission of Assignments

Assignments should be submitted to the drop box on Avenue to Learn by the beginning of class on the respective due date.

Papers received by e-mail or any other means other than through submission on Avenue to Learn not be accepted without the prior express permission of the instructor on each specific 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+

MARK	GRADE
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 contact the instructor ***in advance*** of the due date to make the appropriate arrangements for such an extension.

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

McMaster Student Absence Form (MSAF): 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". Under no circumstances does an MSAF relieve a student of the requirement to complete the assigned work.

Courses With An On-Line Element

Some courses may use on-line elements (e.g. e-mail, Avenue to Learn (A2L), LearnLink, web pages, capa, Moodle, ThinkingCap, etc.). Students should be aware that, when they access the electronic components of a course using these elements, 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 a course that uses on-line elements will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

Online Proctoring

Some courses may use online proctoring software for tests and exams. This software may require students to turn on their video camera, present identification, monitor and record their computer activities, and/or lock/restrict their browser or other applications/software during tests or exams. This software may be required to be installed before the test/exam begins.

Authenticity / Plagiarism Detection

Some courses may use a web-based service (Turnitin.com) to reveal authenticity and ownership of student submitted work. For courses using such software, students will be expected to submit their work electronically either directly to Turnitin.com or via an online learning platform (e.g. A2L, etc.) using plagiarism detection (a service supported by Turnitin.com) so it can be checked for academic dishonesty.

Students who do not wish their work to be submitted through the plagiarism detection software must inform the Instructor before the assignment is due. No penalty will be assigned to a student who does not submit work to the plagiarism detection software. **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 details about McMaster's use of Turnitin.com please go to www.mcmaster.ca/academicintegrity.

Copyright and Recording

Students are advised that lectures, demonstrations, performances, and any other course material provided by an instructor include copyright protected works. The Copyright Act and copyright law protect every original literary, dramatic, musical and artistic work, **including lectures** by University instructors

The recording of lectures, tutorials, or other methods of instruction may occur during a course. Recording may be done by either the instructor for the purpose of authorized distribution, or by a student for the purpose of personal study. Students should be aware that their voice and/or image may be recorded by others during the class. Please speak with the instructor if this is a concern for you.

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 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.

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. **It is your responsibility to understand what constitutes academic dishonesty.**

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. For information on the various types of academic dishonesty please refer to the [Academic Integrity Policy](https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/), located at <https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/>

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.

Conduct Expectations

As a McMaster student, you have the right to experience, and the responsibility to demonstrate, respectful and dignified interactions within all of our living, learning and working communities. These expectations are described in the [Code of Student Rights & Responsibilities](#) (the “Code”). All students share the responsibility of maintaining a positive environment for the academic and personal growth of all McMaster community members, **whether in person or online.**

It is essential that students be mindful of their interactions online, as the Code remains in effect in virtual learning environments. The Code applies to any interactions that adversely affect, disrupt, or interfere with reasonable participation in University activities. Student disruptions or behaviours that interfere with university functions on online platforms (e.g. use of Avenue 2 Learn, WebEx or Zoom for delivery), will be taken very seriously and will be investigated. Outcomes may include restriction or removal of the involved students’ access to these platforms.

Academic Accommodation of Students with Disabilities

Students with disabilities who require academic accommodation must contact [Student Accessibility Services](#) (SAS) at 905-525-9140 ext. 28652 or sas@mcmaster.ca to make arrangements with a Program Coordinator. For further information, consult McMaster University’s [Academic Accommodation of Students with Disabilities](#) policy.

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.

Extreme Circumstances

The University reserves the right to change the dates and deadlines for any or all courses in extreme circumstances (e.g., severe weather, labour disruptions, etc.). Changes will be communicated through regular McMaster communication channels, such as McMaster Daily News, A2L and/or McMaster email.