

CONSTITUTIONAL AND PUBLIC LAW IN CANADA
POLSCI 3CL3
Fall 2022

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Lecture: Mon & Wed, 2:30pm – 3:20pm
Fri, 4:30pm – 5:20pm
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Course Description

This course is intended to give students a greater understanding of the interaction between law and politics and how the law more broadly mediates and structures the relationship between government and citizens. Specifically, this course examines these interactions from the perspective of constitutional, administrative, and human rights law in Canada by considering law as both the output of political action and as the structure in which political action occurs.

To develop this understanding, students will be introduced to the historical, philosophical, and theoretical aspects underlying basic legal concepts and legal reasoning as they relate to constitutions, the rule of law, an independent judiciary, and the administrative state. The course begins with a broad overview of competing conceptions of law as a base to an extensive investigation of the development, interpretation, and evolution of Canadian public law. This preliminary focus will set the stage for a more intensive review of major contemporary issues that fall somewhere in the middle between law and politics including delegated authority and administrative tribunals, competing sources of law, the role of courts, the division and separation of powers, human rights law, and the challenges of quasi-constitutionality.

Students will also develop basic legal research skills as they will learn to find, read, distinguish and summarize judicial and administrative decisions using CanLii. This will further advance critical thinking, literacy, communication, and global understanding skills.

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;
- 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

There are no required texts in this class. The course does not use a specific textbook but rather relies on various readings and case law which are made available through the McMaster University libraries, Google Scholar and CanLii. Please note that the readings

in this class are **optional** and designed to provide further background to the relevant course material. I do however strongly encourage you to read the case law (i.e., judicial decisions) that will be discussed in class.

Class Format

This course is scheduled for three 50-minute sessions per week. The class will be delivered in person in MDCL room 1105 on **Mondays** and **Wednesdays** from **2:30pm – 3:20pm** and on **Fridays** from **4:30pm – 5:20pm**. Two hours of each week (Monday 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 materials as well as quasi-tutorial sessions to review hypothetical fact scenarios and case law to reinforce and apply lecture material to assist with the completion of course assignments.

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

Note Regarding Disturbing Content: When we deal with law and justice, we are sometimes dealing with troubling and disturbing issues. Some of the cases, for example, might be upsetting. Presenting the material in their original form is often necessary in order to provide an accurate depiction of the realities of some of the complex issues around law and politics. If you find material as they are presented to be upsetting and are finding it difficult to discuss them in class, please let the instructor know and he will find an accommodation to address your concerns.

Course Evaluation – Overview

1. Personal Reflection Piece	5%	September 12, 2022
2. Fact Pattern Assignment	25%	October 07, 2022
3. Case Brief	25%	October 28, 2022
4. Op-Ed Assignment	15%	November 18, 2022
5. Final Exam	30%	December Exam Period

PLEASE NOTE: Due dates listed in outline are tentative and timing of actual due dates will depend on coverage of course materials. Some dates are subject to change depending on how we progress through the course throughout the semester.

Students will be provided with details of each assignment **at least one week prior to the assignment being due.**

Course Evaluation – Details

Personal Reflection (5%), due September 12, 2022

Students are required to submit a brief 1 (one) **single-spaced** page reflection on what law means to them. You will provide an answer to the question: **What is law and what does the law mean to you.** This short assignment is not an argumentative paper that requires research. Rather, you are encouraged to reflect on what the law is and means to you in your own opinion.

This assessment will be graded on a pass/fail marking scheme. The full 5% will be awarded to students who complete the assignment on time. This brief one-page assignment must: (1) be single spaced, (2) typed in 12-point Times New Roman font, (3) include a title, (4) include your name, student number, date and the name of the instructor on the top left-hand corner, and (5) have at least 2 (two) paragraphs. A title page is not necessary.

Fact Pattern Assignment (25%), October 07, 2022

Students will submit a two-three (2-3) page judicial decision based on a hypothetical set of facts associated with a Supreme Court of Canada case dealing with one of the major components of the course – the rule of 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 which will have been discussed in depth during lectures.

Case Brief Assignment (25%), due October 28, 2022

Students will locate, summarize and analyze various public law decisions in Canada using the legal research engine CanLii. The instructor will provide at least one detailed tutorial during class as a demonstration for students to assist them in completing this assignment. Further details about this assignment will be discussed during class. The skills associated with this assignment are especially valuable to students pursuing law school in the future.

Op-Ed Assignment (15%), November 18, 2022

This assignment is designed to help students build confidence in developing and communicating political opinions over matters related to law and politics. Students will write a 750-word op-ed on a **relatively current event related to jurisdiction in Canada.** A list of suitable topics will be provided to students although other topics/issues may be used with the permission of the instructor.

Final Exam (30%), December Exam Period

Weekly Course Schedule and Required Readings

THE DISCIPLINE OF LAW

Week 1 (September 7, 9)

September 07, 2022 – Introduction and Course Overview

Readings: None

September 09, 2022 – Law and Politics

Readings (Optional):

- Loughlin, M. 2000. "Politics and Law" in *Swords and Scales: An examination of the relationship between law and politics*. Bloomsbury Publishing, Chapter 1

Week 2 (September 12, 14, 16) – What is (Public) Law?

September 12, 2022

Readings (Optional):

- Loughlin, M. 2000. "Ways of World Making" in *Swords and Scales: An examination of the relationship between law and politics*. Bloomsbury Publishing, Chapter 2

September 14, 2022

Readings: None

September 16, 2022

Case Law:

- *Kosoian v. Société de transport de Montréal*, 2019 SCC 59, [2019] 4 S.C.R. 335

Assignment Due: Personal Reflection Due Monday September 12, 11:59pm

THE ACTORS AND THE RULES

Week 3 (September 19, 21, 23) – The Rule of Law

September 19, 2022

Readings (Optional):

- Hogg, P., Zwibel, C. "The Rule of Law in the Supreme Court of Canada" *University of Toronto Law Journal*, Summer 2005 vol. 55, no 3., pp. 715-732

September 21, 2022

Readings: None

September 23, 2022 – Fact Pattern Assignment Demonstration/Tutorial

Week 4 (September 26, 28, 30) Sources and Systems of Law

September 26, 2022

Readings (Optional):

- Fuller, L.M. 1964. "The morality that makes law possible" in *The Morality of Law*. Chapter 2 (p. 33 - 41 only)

September 28, 2022

Readings: None

September 30, 2022 – NO CLASS! (National Day for Truth and Reconciliation)

Week 5 (October 03, 05, 07) Organization and Institutions of Law

October 03, 2022

Readings (Optional):

- Macfarlane, E. 2012. "The Evolution of the Court and its Justices" in *Governing from the bench: The Supreme Court of Canada and the judicial role.*, pp. 39-69

October 05, 2022

Readings: None

October 07, 2022 – No Lecture: Use this time to complete your Fact Pattern Assignment if needed

Assignment Due: Fact Pattern Due Friday Oct. 07, 2022 11:59pm

Week 6 (October 10, 12, 14) Mid-term recess, No Classes!

CONSTITUTIONAL LAW

Week 7 (October 17, 19, 21) Separation of Powers

October 17, 2022 – Case Brief Assignment Demonstration

Readings: **(Mandatory):**

- *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34

October 19, 2022

Readings (Optional):

- Roach, K. 2018. "The Judicial, Legislative and Executive Roles in Enforcing the Constitution: Three Manitoba Stories" in *Canada in the World: Comparative Perspectives on the Canadian Constitution* Edited by Richard Albert and David Cameron., pp. 264-302

October 21, 2022

Readings: None

Week 8 (October 24, 26, 28) Judicial Federalism and Jurisdiction I

October 24, 2022

Readings (Optional):

- Laskin, B. 1967. The Canadian constitution after the first century. *Saskatchewan Law Review*, 32(3), 159-165.

October 26, 2022

Readings: None

October 28, 2022 – No Lecture: Use this time to complete your Case Brief Assignment if needed

Assignment Due: Case Brief Due Friday Oct. 28, 2022, 11:59pm

Week 9 (October 31, Nov. 02, 04) Judicial Federalism and Jurisdiction II

October 31, 2022

Readings (Optional):

- 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 02, 2022

Readings: None

November 04, 2022 – No Lecture

ADMINISTRATIVE LAW

Week 10 (November 07, 09, 11) The Administrative Justice System

November 07, 2022

Readings (Optional):

- Liston, M. (2012). Governments in miniature: the rule of law in the administrative state. *Administrative Law in Context, 2d ed (Toronto: Emond Montgomery, 2013)* (78- 80 and 87-97only) November 09, 2022

November 09, 2022

Readings: None

November 11, 2022 – No Lecture

Week 11 (November 14, 16, 18) Administrative Tribunals & Procedural Protections

November 14, 2022

Readings (Optional):

- Houle, F., & Sossin, L. (2006). Tribunals and guidelines: Exploring the relationship between fairness and legitimacy in administrative decision-making. *Canadian Public Administration, 49(3)*, 282-307.

November 16, 2022

Readings: None

November 18, 2022 – Guest Lecture

Assignment Due: Case Brief Due Wednesday Nov. 18, 2022, 11:59pm

Week 12 (November 21, 23, 25) Tribunals and Courts I

November 21, 2022

Case Law (**Mandatory**): *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817

November 23, 2022

Readings: None

November 25, 2022 – Legal Test Application Tutorial I

Week 13 (November 28, 30, Dec. 02) Tribunals and Courts II

November 28, 2022

Case Law (**Mandatory**): *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65

November 30, 2022

Readings: None

December 02, 2022 – Legal Test Application Tutorial II

Week 14 (December 05, 07,09) Course Conclusion and Exam Preparation

Course Policies

Submission of Assignments

Assignments should be submitted to the drop box on Avenue to Learn by the respective due date. Papers received by e-mail or any other means other than through submission on Avenue to Learn will 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+
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. If 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.

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 (i.e. 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

Students should make all reasonable efforts to attend class and are responsible for the material covered in each and every scheduled class. However, it is understood that some absences are unavoidable, and students should make every effort to catch up on missed materials and the instructor will provide reasonable assistance to assist a student. In this

regard, students should attempt to obtain lecture notes or other class materials from their colleagues before seeking assistance from the instructor concerning missed lecture and/or class content. 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

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".

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.