

**RESEARCH ON LAW AND COURTS**  
**POLSCI 4LC3**  
**Winter 2022, Term 2**

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## **Course Description**

The increasing judicialization of policy making and politics and the increasing politicization of the judiciary in many countries around the world has been attributed to a number of causes and has demonstrated (or not) particular effects and/or outcomes. The ongoing academic debate around the reasons underlying judicialization and its future directions warrant ongoing academic research into the topic(s). Through a series of seminars, this course will examine different ways (or methodologies) to research and investigate the potential causes of this increased legalization or judicialization and consider the impact that these developments have had on the policy-making process and politics more generally and on the judiciary.

## **Course Objectives**

By the end of the course students should:

- Approach the research of judicial studies questions from a variety of methodological approaches and understand the advantages and disadvantages of these different approaches;
- Have a deeper understanding of and engage with on a critical level the various theoretical approaches to understanding the impact of judicial institutions on politics and public policy as set out in the judicial studies literature; and
- Have enhanced primary research and written and oral communication skills;

## **Required Materials and Texts**

- Various readings (as listed below) available through the McMaster University libraries or Google Scholar and as posted on Avenue to Learn.

## **Class Format**

The class is scheduled for one three-hour seminar session per week.

As a fourth year seminar, students are expected to play an active role in the teaching and learning process. One of the goals of the course is to prepare students for further study or to be able to work on their presentation skills if they decide to enter the workforce. The role of the instructor will be to help provide the broader context for the material being reviewed and to facilitate the class discussion when it falters. During the semester, discussions will take place on the theoretical and methodological foundations of the judicial studies literature and students are expected to participate in the discussions on a weekly basis. The instructor will contribute to the discussion by adding insights and posing or reframing questions. To have a thoughtful and intellectual discussion, students

are required to read the readings each week. All students must be prepared for and attentive in class.

As broad participation in the discussions is essential for deeper learning of course materials, the instructor reserves the right to use the Socratic method of calling on individual students without warning for contributions to the discussions.

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.

### **Course Evaluation – Overview**

1. Participation - 30%, weekly beginning January 17, 2022.
2. Research Design - 20%, February 28, 2022.
3. Major Research Paper - 40%, April 11, 2022.

### **Course Evaluation – Details**

#### **Seminar Participation (30%) – Weekly beginning January 17, 2022**

Participation in the seminar will account for thirty percent of the final grade. Students should note that participation is not synonymous with attendance.

Given the course format, it is anticipated that students will actively participate in the discussions each week on a given topic. In this regard, students may participate in the weekly discussion in one of three ways.

First, students may make comments or ask or respond to questions asked during the course of the weekly discussions. This is the preferred method of participation.

Second, students may submit a brief summary of the weekly readings and pose two questions that they have after having completed the readings or that are not fully explained therein. These summaries and questions must be provided to the instructor at the beginning of the seminar for a given week and no submissions will be accepted after the start of class. The instructor may call upon students who submit these summaries during the class discussions on the topic where the instructor believes that their knowledge may be relevant to the class discussion.

Third, students may post comments on a discussion thread on Avenue to Learn for the specific seminar discussion and only within twenty-four hours after each seminar and certainly before the next scheduled class meeting. Only those students who have attended the seminar will have the option of having this third form of discussion contribute to their participation grade.

Regardless of the manner of participation, students should complete the assigned readings before each class and be prepared to contribute meaningfully to class discussions. Students will be assessed on their ability to make original points, express their own thoughts on the topic, ask meaningful questions, engage with other students' comments and incorporate the readings into their own comments. In this regard, students should, at a minimum, attend class having attempted to answer the following questions in relation to each reading:

1. What is the author's primary purpose in writing the article?
2. What are the main arguments being advanced by the author?
3. What methodology and evidence has been employed in support of the argument?
4. What are the shortcomings or logical contradictions in the methodologies used or arguments advanced, if any?
5. How does the argument relate to the specific topic and or the broader course?

If you are having trouble interpreting the material, it is a good idea to see the instructor for extra help early in the semester. Telling the instructor at the end of the course that you either have difficulty interpreting the material and/or that you are too timid to speak is not an acceptable reason for failing to participate; your mark will reflect negatively as a result. You need to be proactive about the need to complete this task effectively in order to receive a good mark.

Participation grades will be assessed on the basis of Topic and Discussion weeks. There will be no consideration of participation during Slack weeks.

### **Research Design Paper (20%), due by February 28, 2022.**

Students will submit a reasonably brief description of the manner in which they intend to research their chosen topic for the major research paper and a consideration as to why the method they have chosen is likely to produce a better outcome than other methodological options discussed in the course content.

There are two purposes underlying the research design paper. The first purpose is to briefly describe (and receive feedback on) the methodological approach to be used, identify and define the relevant factors/variables to be incorporated into the research, establish the sources of **PRIMARY** evidence and highlight the strengths and weaknesses of both the method and evidentiary sources.

The second purpose of the paper is to demonstrate an understanding of the different methodological approaches discussed in the course content and the relevance (or lack thereof) of each to the proposed research topic. In short, the second purpose of the paper takes the place of a take home exam on the course content.

Students are encouraged to submit the research design paper as early as possible to receive feedback on their approach to their research for the major research paper. Given that the purpose of the project is to receive feedback before doing the primary research, papers **WILL NOT** be accepted after March 07, 2022.

**Major Research Paper (50%), due April 11, 2022.**

Students will write a major research paper of a minimum of at least five thousand (5000) words or between twenty and twenty five pages (exclusive of bibliography) concerning a policy issue or problem that has involved some form of litigation or judicial consideration or involves the judiciary either as political/policy actors or as an institution of the state.

The paper should be analytical in nature and will be supported by both empirical and academic research, including empirical research of a **PRIMARY** nature. While there is no minimum number of sources that a student should include in their papers, the grade assigned will be dependent on the scope and depth of the research and how it is used in the paper. A good rule of thumb in all academic papers is at least one new academic source for each page of the paper. At the fourth year level, you can expect that this standard would be a bare minimum of acceptable theoretical research to support the evidentiary argument made based on the primary research. The scope of evidentiary research will depend entirely on the research methodology chosen to address the research question.

In addition to the primary research, the paper will also be graded on the basis of its understanding of at least one of the theoretical frameworks and/or conceptual issues raised in the first semester in the judicial studies literature, its comprehensiveness and comprehensibility in dealing with the policy issue/problem/field in question, and the contribution it makes to the understanding of the role and/or impact of the courts in democratic states more generally.

## **Weekly Course Schedule and Required Readings**

### **Week 1 (Jan 10) Introduction and Organization**

No readings assigned.

## **I. Intramural Research Methods**

### **Week 2 (Jan 17) Activism versus Legal Models**

Riddell, T., 2016. Measuring Activism and Restraint: An Alternative Perspective on the Supreme Court of Canada's Exclusion of Evidence Decisions under Section 24 (2) of the Charter. *Canadian Journal of Criminology and Criminal Justice* vol. 58(1), 87-111.

Cross, Frank and Emerson Tiller. 1998. "Judicial partisanship and obedience to legal doctrine: Whistleblowing on the federal courts of appeals" *The Yale Law Journal* vol. 107(7), 2155-2176.

Friedman, Barry. 2006. "Taking law seriously" *Perspectives on Politics* vol. 4(2), 261-276.

Choundhry, Sujit, and Clare E. Hunter. 2003. "Measuring judicial activism on the Supreme Court of Canada: A comment on Newfoundland (Treasury Board) v. NAPE" *McGill Law Journal* vol. 48, 525.

See also:

Wetstein, M.E., Ostberg, C.L., Songer, D.R. and Johnson, S.W., 2009. "Ideological Consistency and Attitudinal Conflict: A Comparative Analysis of the US and Canadian Supreme Courts." *Comparative Political Studies* vol. 42(6), 763-792.

Radmilovic, Vuk. 2013. Governmental interventions and judicial decision making: The Supreme Court of Canada in the age of the charter. *Canadian Journal of Political Science* vol. 46(2), 323-344.

### **Week 3 (Jan 24) The Law and Judicial Discourse**

Banfield, Andrew and Greg Flynn. 2015. "Activism or Democracy? Judicial Review of Prerogative Powers and Executive Action" *Parliamentary Affairs* vol. 68(1).

Schertzer, Robert. 2016. "Quebec Justices as Quebec Representatives: National Minority Representation and the Supreme Court of Canada's Federalism Jurisprudence" *Publius: The Journal of Federalism* vol. 46(4), 539-567

Flynn, Greg and Tanya Kuzman. 2013. "Meaningful Participation? The Judicialization of Electoral Reform in Canada Post-Figueroa v. Canada" *Canadian Political Science Review* vol. 7(1), 37-46.

## **Week 4 (Jan 31) Discussion Week**

No Readings Assigned

## **II. Extramural Research Methods**

### **Week 5 (Feb 7) Litigants and Policy Frames**

Vanhala, Lisa. 2009. "Disability rights activists in the Supreme Court of Canada: Legal mobilization theory and accommodating social movements" *Canadian Journal of Political Science* vol. 42(4), 981-1002.

Pralle, Sarah. 2006. "The "mouse that roared": Agenda setting in Canadian pesticides politics" *Policy Studies Journal* vol. 34(2), 171-194.

Hennigar, Matthew. 2017. "Unreasonable Disagreement?: Judicial-Executive Exchanges about Charter Reasonableness in the Harper Era" *Osgoode Hall Law Journal* vol. 54(4), forthcoming.

See also:

Flynn, Greg. 2011. "Court Decisions, NIMBY Claims, and the Siting of Unwanted Facilities: Policy Frames and the Impact of Judicialization in Locating a Landfill for Toronto's Solid Waste." *Canadian Public Policy* vol. 37(3), 381-393.

### **Week 6 (Feb 14) Institutional Impacts**

Macfarlane, Emmett. 2013. "Dialogue or compliance? Measuring legislatures' policy responses to court rulings on rights." *International Political Science Review* vol. 34(1), 39-56.

Smith, Miriam. 2007. "The impact of the charter: Untangling the effects of institutional change" *International Journal of Canadian Studies* vol. 36, 17-40.

Roach, Kent. 2006. "Dialogue or defiance: Legislative reversals of Supreme Court decisions in Canada and the United States" *International Journal of Constitutional Law* vol. 4(2), 347-370.

See also:

Knopff, Rainer, Rhonda Evans, Dennis Baker and David Snow. 2016. "Dialogue: Clarified and Reconsidered" *Osgoode Hall Law Journal* vol. 54,609.

### **Week 7 (Feb 21) Reading Week, NO CLASS**

No Readings Assigned.

### **Week 8 (Feb 28) Discussion Week**

No Readings Assigned.

***INDIVIDUAL RESEARCH DESIGN PAPERS DUE IN AVENUE DROP BOX.***

### **Week 9 (Mar 7) Research Progress Update and Feedback**

No Readings Assigned.

Class time will be set aside this week for students to meet with their colleagues and/or the instructor to discuss the methodological approach being used in their paper.

### **Week 10 (Mar 14) Slack Week**

No Readings Assigned

### **Week 11 (Mar 21) Research Progress Update and Feedback**

No Readings Assigned

Class time will be set aside this week for students to meet with their colleagues and/or the instructor to discuss their research findings and/or any difficulties in pursuing their primary research evidence.

## **Week 12 (Mar 28) Slack Week**

No Readings Assigned

## **Week 13 (Apr 04) Slack Week**

No Readings Assigned

## **Week 14 (Apr 11) Slack Week**

No Readings Assigned

***FINAL RESEARCH PAPER DUE.***

## **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:

<b>MARK</b>	<b>GRADE</b>
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**

Students should make all reasonable efforts to attend 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 in the class 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 tutorials 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.

### **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](http://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](#), 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](mailto: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.