

Communities and Public Law

AP/PPAS 2200 3.0 B

Fall 2021

Tuesdays 7:00-9:50 PM

Vari Hall (VH) D

Course Director: Adam Schachhuber

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Office Hours: By appointment

Office Location: Zoom

Course Description:

This course is an introduction to public law in Canada. Students will learn about legal theory and the history of the Canadian legal system as well as the three main branches of public law: constitutional law, administrative law, and criminal law. Lectures and readings will address a variety of topics including the nature of law, the colonial origins of the Canadian legal system, federalism and the division of powers, the role of the Supreme Court in Canadian politics, the *Canadian Charter of Rights and Freedoms*, judicial review of administrative decisions, criminal law, and ongoing efforts to address colonialism and structural racism in the criminal justice system. Particular attention will be paid to public law's role in the historical marginalization of communities such as immigrants and refugees, indigenous peoples, and racialized minority groups, but also to some of the ways in which members of those communities have chosen to mobilize public law in their pursuit of rights, justice, and reconciliation.

Learning Objectives:

Upon completion of this course, students should better understand: 1) the history and philosophical foundations of Canadian public law; 2) the basic structure of the Canadian constitution and central concepts in constitutional law; 3) the impact of the *Charter* and judicial review on public administration and the administration of justice; and 4) how to find, read, and make sense of legal materials including legislation and case law.

Format:

The course will consist of a weekly two-hour lecture to be followed immediately by a one-hour session dedicated to discussion and the development of research and writing skills. Students are expected to have completed the week's required readings before coming to class.

Required Readings:

There is one required textbook for this course, and it is available for purchase from the York University Bookstore:

John Fairlie, *A Brief Introduction to Law in Canada*, 2nd ed. (Toronto: Emond Publishing, 2021)

Additional required readings – to consist mainly of online Supreme Court of Canada (SCC) judgments and the odd scholarly article, speech, or report – will be made available through hyperlinks in this syllabus and on the course’s eClass page.

Evaluation:

Participation:	10%
Essay Proposal (1-2 pp., due Oct. 19):	10%
Midterm Test (in class, Oct. 26):	20%
Essay (6-8 pp., due Dec. 7):	30%
Final Exam (Fall exam period):	30%

Lecture and Reading Schedule:

Week 1 (Sept. 14): *Studying the law*

Fairlie, ch. 1, “What is Law?”

Week 2 (Sept. 21): *The development of public law in Canada*

Fairlie, ch. 2, “Common Law, Civil Law, and Indigenous Legal Systems” and ch. 3, “From the Reception of English and French Law into Canada to the *Charter*”

Week 3 (Sept. 28): *Constitutional law I: Federalism*

Fairlie, ch. 4, “The Legislature and the Executive: The First and Second Branches of Government” and Appendix A: Constitution Act, 1867

Week 4 (Oct. 5): *The courts and judicial review*

Fairlie, ch. 5, “The Judiciary: The Third Branch of Government”

[Reference re Same-Sex Marriage, \[2004\] 3 S.C.R. 698, 2004 SCC 79](#)

Reading Week (Oct. 12): No Class!

Week 5 (Oct. 19): *Constitutional law II: Human rights and the Charter*

Fairlie, ch. 6, “Civil Liberties” and Appendix B: Constitution Act, 1982

[The Rt. Hon. Beverley McLachlin. “Human Rights Protection in Canada.” *Osgoode Hall Review of Law and Policy* 2.1 \(2014\)](#)

In-Class Midterm Test (Oct. 26)

Week 6 (Nov. 2): *Administrative law*

Fairlie, ch. 9, “Administrative Law”

[Canada \(Minister of Citizenship and Immigration\) v. Vavilov, 2019 SCC 65](#)

Week 7 (Nov. 9): *The constitutional fight over administrative detentions*

[Charkaoui v. Canada \(Citizenship and Immigration\), \[2007\] 1 S.C.R. 350, 2007 SCC 9](#)

[Maureen T. Duffy and Rene Provosi, “Constitutional Canaries and the Elusive Quest to Legitimize Security Detentions in Canada.” *Case Western Reserve Journal of International Law* 40 \(2009\)](#)

Week 8 (Nov. 16): *Criminal law*

Fairlie, ch. 10, “Criminal Law”

[Rosemary Cairns Way. “Attending to Equality: Criminal Law, the Charter and Competitive Truths.” *The Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference* 57 \(2012\)](#)

Week 9 (Nov. 23): *Addressing colonialism and structural racism in criminal sentencing*

[R. v. Gladue, \[1999\] 1 S.C.R. 688](#)

[Jonathan Rudin, “Aboriginal Over-representation and R. v. Gladue: Where We Were, Where We Are and Where We Might Be Going.” *The Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference* 40 \(2018\)](#)

Week 10 (Nov. 30): *Access to justice*

Fairlie, ch. 12, “Access to Justice and Law Reform”

[Canada \(Attorney General\) v. Downtown Eastside Sex Workers United Against Violence Society, 2012 SCC 45, \[2012\] 2 S.C.R. 524](#)

Exam Review (Dec. 7)

Grades:

Grades for this course will be calculated according to the standard nine-point grading scheme used in all undergraduate programs at York University (e.g. A+=“Exceptional”=90-100%, A=“Excellent”=80-89%, B+=“Very Good”=75-79%, B=“Good”=70-74, C+=“Competent”=65-69%, C=“Fairly Competent”=60-64%, etc.). A detailed explanation of this scheme can be found in the School of Public Policy and Administration’s [Academic Calendar](#).

Assignment Submission and Late Penalties:

Written assignments should be submitted on or before the announced due date through the upload link(s) on the course’s eClass page. Late submissions will be assessed a penalty of five percent (ie. one half-letter grade) per day. Extensions will be granted only in exceptional circumstances.

Missed Exams:

The final exam for this course will be scheduled during the official Fall semester exam period and carried out under the conditions set by the Registrar’s Office. In accordance with York University policy and procedure, students who miss an exam should contact both the Course Director and the School of Public Policy and Administration as soon as possible. Students who seek a make-up exam may be required to request deferred standing in the course.

Academic Honesty:

Students should familiarize themselves with their rights and responsibilities regarding academic honesty. These are clearly set out in the [Senate Policy on Academic Honesty](#) and the [Student Code of Conduct](#) as well as the [Academic Integrity Module](#) provided through the Student Papers and Academic Research Kit (SPARK). Additional resources can be found in the [Academic Honesty Letter](#) sent to undergraduate students of the Faculty of Liberal Arts & Professional Studies in 2020.

Accommodations for Students with Disabilities:

Students with disabilities may seek academic accommodations in this course in accordance with the [Senate Policy on Academic Accommodation for Students with Disabilities](#). Students who seek academic accommodations must be registered with Student Accessibility Services and should try to provide the Course Director with an official Letter of Accommodation as early as possible in the semester.