

**York University**  
**School of Public Policy and Administration**  
**Faculty of Liberal Arts and Professional**  
**Studies AP PPAS 4130 6.0**  
**Politics, Law and the**  
**Courts 2022**  
**Prof: Danny**  
**O'Rourke-Dicarlo**

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**COURSE**  
**DESCRIPTION**

This course examines the relationship between “politics and law” in Canada. Questions we will explore include: what is the Supreme Court’s role in the Canadian polity? This exploration will focus on two themes: first, the impact the Charter of Rights and Freedoms has had on Canadian politics and the impact of Canadian political debate and political values on the development of the Supreme Court’s charter jurisprudence; second, we will examine the implications for Canadian democracy of the Supreme Court’s “political role” and the limits of litigation/adjudication/the judicial role on the political/social life of Canada through a critical assessment of recent controversial Appeal and Supreme Court decisions

**Law, Politics and The Courts 2021 Winter Term Schedule**

**REQUIRED TEXTS**

**(York University Bookstore)**

- (1) Kent Roach, *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue*, Toronto: Irwin law, 2001. (Paperback ISBN: 1-55221-054-5)

**Wed/Thurs Session 11:30 ACE 006**

<b>Winter Term</b>
Mid-Term take home 35%
Presentation: 30%
Take Home Final Exam: 35%

**Jan 12: Introduction**

**Jan 14: Philosophy, Law and Politics**

Miro Cerar. 2009. The Relationship Between Law and Politics. Annual Survey of International & Comparative Law: Vol. 15: Iss. 1, Article 3.

<https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1126&context=annlsurvey>

**Jan 19: Judicial Review and Judicial Activism**

Roach, ch 1, ch2

**Jan 21: Judicial Activism Before and After the Charter**

Roach, ch 3, ch4, ch 5

**Jan 26: Dimensions of Judicial Activism**

Roach, ch 6, ch7

**Jan 28: Limits of Public Law Adjudication (Mid Term Circulated)**

Roach, ch 8, ch9

**Feb 2: Mid-Term Discussion**

**Feb 4: Popular Critiques of Judicial Review (Mid Term Due In Class)**

Readings TBA

**Feb 9: Dialogue Between Courts and Legislatures**

Roach, ch 10

**Feb 11: Beyond Judicial Activism**

Roach, ch 11, ch 12

**Feb 16: Democratic Dialogue**

Roach, Ch 13, ch 14

**Feb 18: Judicial activism and democratic dialogue/ Democratic dialogue in theory and Practice: A Response to Critics.**

Roach, ch 15,

**March 2: Review**

Roach ch 16, 17

**Presentations Begin:**

**March 4:** Smith Jennifer. The Origins of Judicial Review in Canada. Canadian Journal of Political Science / Revue canadienne de science politique, Vol.16, No. 1 (Mar., 1983), pp. 115-134

**March 9:** Sanjeev, Anand. The Truth About Canadian Judicial Activism. Constitutional Forum, Volume 15, Number 2, 2006

**March 11:** Kmiec Keenan. 2004. The Origins and Current Meanings of Judicial Activism. California Law Review, 92, 1441-1477

**March 16:** Peter Russell. (1994). Canadian Constraints on Judicialization from Without. International Political Science Review, 15:2, pp 165-175.

**March 18:** Hunt, Stacie, "The Judicialization of Politics in Canada and the United States" (2013). Honors Projects. 39. <https://scholarworks.bgsu.edu/honorsprojects/3>

**March 23:** Peter Hogg and Allison Russell. "The Charter Dialogue between Courts and the Legislatures." Osgood Hall Law Journal. 35:1 (1997).

**March 25:** Andrew Petter. Taking Dialogue Theory Much Too Seriously 2007 .pp.187-199 <https://pdfs.semanticscholar.org/09e6/27bbc156865f3a0a348bd41ce75727a905fd.pdf>  
Richard A. Epstein, "Beyond Judicial Activism and Restraint," 1 Georgetown Journal of Law and Public Policy 85 (2002)

**March 30:** Yasmin Dawood, "Democracy and Dissent: Reconsidering the Judicial Review of the Political Sphere" (2013) 63 Supreme Court Law Review 59-87.

**April 1:** Monahan, Patrick J. "Judicial Review and Democracy: A Theory of Judicial Review." UBC Law Review 21.1 (1987): 87-164

**April 6:** Peter Hogg [Charter Dialogue Revisited: Or "Much Ado About Metaphors"](#) 2007 <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1254&context=ohlj>

**April 8: Review Session**

### **Accommodation for Disabilities:**

Students with disabilities who require adaptations or services must discuss their needs with the instructor. Accommodation for disability must be arranged in conjunction with the Office for Persons with Disability.

### **Plagiarism:**

Plagiarism is generally considered to be the most serious academic misconduct that a student can commit. Whether intentionally or unintentionally, instances of plagiarism will have serious academic consequences. In order to avoid slipping into the realm of plagiarism, students are advised to familiarize themselves with York University's definition of academic dishonesty.

### **Seminar Facilitation/Presentation (20%)**

This is an advanced seminar and in groups of two (or three, depending on class size), each student will be responsible for leading one seminar on **one** of the weekly **additional readings**. The objective is to encourage critical and analytical engagement with the readings, to make connections between the readings and other relevant issues and to develop your seminar facilitation and communication skills.

This is NOT a traditional, 'stand at the front of the class and talk about a topic' presentation. Your job is to *facilitate* an extended seminar discussion about the readings. The key to leading a successful seminar is to come up with interesting, creative and original ways to encourage, engage and guide your fellow students in 'unpacking' and discussing the readings. **YOU ARE NOT REQUIRED TO COVER ALL ASPECTS OF THE ADDITIONAL READINGS, ONLY THE MOST SALIENT/SIGNIFICANT ARGUMENTS AND/OR THEMES.**

➤ **Internal Analyses**

To read an article critically means that you are not simply reading it to glean facts about a topic but rather you are reading it with a view to examining the way *the author has understood, argued and presented the topic*. Critical analysis does not simply mean 'criticism' (i.e. pointing out something that is negative or lacking in the reading). It involves unpacking and evaluating: the article's central questions/arguments; the conceptual/theoretical tools that the author uses to make sense of the topic of the article; its socio-political implications; and its overall strengths and weaknesses.

➤ **TWO Discussion Questions Posted on Moodle**

Seminar leaders will post two (2) questions to the "Weekly Seminar" area on the course Moodle page *one week* ahead of their seminar to help the class prepare for the seminar discussion of the readings. Discussion questions should aim to encourage **critical and analytical thinking** about the readings.

Discussion questions will not work if they simply require a yes or no answer or the simple retrieval of a fact from a reading. Instead questions can focus on, among other aspects, the nature and quality of the empirical evidence in the reading, the elements and consistency of the argument, methodological issues raised by the reading, theoretical issues raised by the reading, key concepts used in the reading, the ways in which the reading sheds light on course concepts, comparisons with other course readings. The two advance questions that you come up with are intended as *a starting point* to guide the students' thinking as they read the articles to help prepare them for the seminar that you have planned.

➤ **Creative and Interesting Facilitation Strategies**

In addition to the two questions posted on moodle one week in advance of the seminar date, seminar leaders need to think carefully and creatively about how to facilitate and guide class discussion in these directions. This may include drawing from your advance questions, posing follow-up questions, individual or group exercises, and making use of other creative and interesting resources such as relevant media stories, law or policy documents, graphics, audio and visual cues and exercises, photography etc.

➤ **Seminar Moderation**

In addition to facilitation, seminar leaders are responsible for moderating class discussion. This may entail: calling on participants to give their thoughts about a discussion question or issue; planning and administering individual or group exercises or using other creative pedagogical tools to stimulate critical thinking and class discussion; keeping an eye on the time (**15-20 minutes max**,) and bringing discussion of a particular question or issue to a close in order to move on to another question or issue; ensuring that the discussion stays focused, relevant and on track.

#### **Other Points to Note about the Seminar Facilitation:**

- **Distribution of one page plan.** On the day of your seminar, you will provide the class with a one-page outline/plan of your seminar (this must be a hard copy to be distributed to the class.)
- **Begin with *brief* introduction to the readings.** You are expected to begin with a brief introduction to the readings that identifies the main arguments and key points ***in your own words***. Try to make this as engaging as possible by not simply reading from a prepared text.
- **Prepare a Power Point Presentation** that illustrates the main-points of the articles under review and draws connections with broader course concepts and themes
- **This is a joint assignment.** The seminar must be approached as a cooperative, team effort at every stage:
  - Students must work *together* to plan and organize all parts of the seminar.
  - *Both* seminar leaders need to read and think carefully about *both* assigned readings.
  - Both seminar leaders should work together to unpack the readings and identify what points of analysis will be important to address in the seminar.
  - Both seminar leaders need to collaborate in order to design and plan creative, interesting and original strategies to guide the seminar discussion in desired directions.
  - Both seminar leaders must demonstrate that they have read and thought carefully about *both* of the required readings and that you have both been actively engaged in the planning and preparation of all parts of the seminar.
- **Seminar evaluation.** Seminars will be evaluated according to:
  - The quality of the advance and follow-up discussion questions (e.g. Were they provided in time? Were they thoughtfully constructed to engage students in critical thinking about the readings; Did they effectively provoke critical discussion; Were they relevant to the course?);
  - The quality of the oral introduction/power-points to the readings (e.g. Was it presented in an engaging manner? Did it accurately capture the main arguments of the article? Was it logical, well organized and concise? Was it presented without directly reading from text? );
  - The quality of the critical analysis of the articles; identification and engagement with key arguments, concepts, findings, conclusions, methods, evidence

(internal); consideration of connections between the articles and links made with course themes

- The creativity, planning and effectiveness of the seminar facilitation strategies and moderation;
  
- The preparation, organization and format of the seminar. This includes the demonstrated degree of collaboration between the seminar leaders in the preparation and planning of the seminar, evidence that both seminar leaders were familiar with both readings and had thought together about how they relate/compare, the planning and timing of the different parts of the seminar, coming up with innovative strategies and exercises to stimulate discussion and critical thinking.

**Checklist:**

- ✓ *(at least)* **4 weeks prior:** Start reading and preparing with your partner
- ✓ **1 week prior:** Post the finalized questions on the website
- ✓ **Day of:** Brief summary of seminar plan (hard copies for class)
- ✓ **Day of:** Amazing facilitation with creative and engaging pedagogical tools
- ✓ **Next Day:** Submit Power Point Presentation to Course Director