

Public Law I: The Constitution and the Courts in Canada

AP/PPAS 3135A S1 3.0 A Public Law I – Tues-Thurs 11:30-2:30

Syllabus

Course Director: Danny O'Rourke-Dicarlo

email: rourke@yorku.ca

Virtual Office Hours: By appointment

Course Description

This course examines the courts and their place in the development of Canadian federalism. Using the courts and the process of judicial review as the centre of our analysis, we will consider the roles of lawyers and judges and the relationship between law, politics, and public policy. In doing so, students will become familiar with the Canadian court structure, the process of judicial review, and Canadian constitutional law as it applies to Canadian federalism. Students will also learn to analyse statutory and case law so as to understand its legal meaning as well as learn to do legal research in this context.

Format

The course will consist of on-campus lectures, interactive discussions of the readings, and occasional additional audio-visual on-line material. The lecture takes place during the first part of class. We will take breaks periodically during the first half to allow for some stretching-out and breakout discussions. During the second part of class there will be an opportunity for class discussion which we call an 'informal tutorial.' The 'informal tutorial' is optional for those students who wish to discuss any class related material/issues. No new material will be covered during the tutorial.

In order to facilitate class discussion and participation, students are expected to read the assigned readings beforehand.

Expected Learning outcomes:

After the completion of the course students will:

- Acquire a comprehensive knowledge of the distinctive features of the Canadian constitution and constitutional changes
- Gain a better understanding of federal division of power and the historical trajectory of Canadian federalism

- Gain a foundational understanding of judicial interpretation of the federal diction of power and the potential of federalism review to shape federal-provincial power dynamics.
- Gain an appreciation of the dynamics and complexity of the roles of the courts and federalism review in Canada
- Develop analytical and research skills that are essential to pursuing advanced studies in the field of public policy and administration

Readings

Peter Hogg *Constitutional Law of Canada*, Student Edition, available from the bookstore.

There will be no course-pack for this course, but you can expect up to three additional readings each week, along with the appropriate sections of the textbook. Please note that this course requires extensive and dedicated reading of the course material.

Evaluation

Grades will be assigned as follows:

- 30% – Case Summary (written assignment due June 19th via Moodle)
- 35% – Final Exam (TBA)
- 35% – Midterm Exam (distributed May 26th and due via Moodle by June 7th)

Web Resources:

Supreme Court of Canada homepage:

<https://www.scc-csc.ca/home-accueil/index-eng.aspx>

Reported Decisions of the Supreme Court 1983 to Present:

<https://www.scc-csc.ca/case-dossier/index-eng.aspx>

Canadian Legal information Institute (a search engine for reported court cases in all Canadian jurisdictions). <https://www.canlii.org/en/>

Lecture Schedule

Lecture 1 May 10

- *Introduction to the Course: Zoom Greeting at 11:30*

Lecture 2 May 12

- *Sources and Structure of Canadian Law*
- Hogg Chapters 1, 2, 3
- *Constitution Act 1867, Constitution Act 1982*

Lecture 3 May 17

- *Canadian Constitutional Principles*
- Hogg Chapters 5.1-4, 9.1-2, 12

Lecture 4 May 19

- *The Canadian Court System*
- Hogg Chapters 7, 8
- *Ref. re. Remuneration of Judges*

Lecture 5 May 24

Judicial Review

- Hogg Chapter 15.1-4, 15.9
- *Edwards v. A.-G. Can.*

Lecture 6 May 26 (Mid-Term Distributed on Moodle)

- *POGG – Peace, Order and Good Government*
- Hogg Chapter 17
- *Russell v. The Queen*

Anti-Inflation Reference

Lecture 7 May 31

No formal lecture: I will be available on-line for a Mid-Term Q and A session beginning at 11:30am

Lecture 8 June 2 *Criminal Law*

- Hogg Chapter 18
- *Margarine Reference*
- *RJR-MacDonald v. Canada*

Lecture 9 – June 7th (Mid Term Due online via Moodle by day’s end)

— **Lecture 10 – June 9th**

- *8 -Trade and Commerce 9- Property and Civil Rights*
- Hogg Chapter 20, 21
- *Dominion Stores v. The Queen*
- *Manitoba Egg Reference*

Lecture 11 June 14

- *Aboriginal Peoples*
- Hogg Chapter 28
- *The Queen R v Van Der Peet*

Lecture 12 June 16 (CASE SUMMARY DUE ONLINE via Moodle by day’s end)

- *Exam Review*

Written Assignment:

The written assignment for this course consists of a case summary on a chosen topic drawn from a list provided below. Topics that are not specified in the list will not be accepted. The essay assignment is worth **30%** of the final grade.

A case summary is an extended descriptive analysis on a particular court case. The aim is to assess only a particular case was decided by the court. The case comment is both a descriptive and interpretative essay which focuses on specific court case but is not restricted to a simple exposition of its details.

Organizational Structure of a Case Summary:

Even though there is no established set of rules on how to write a case summary, the following suggestions might be useful;

1-Introduce the case (specifying your rationale behind selecting this case). Identify the problem or problems under review.

2-Outline the main legal issues and questions.

3-Survey the development of law in this particular area (**case law referenced**) and discuss the main issues raised in the case.

4-Summarize the judicial ruling on the case

The expected length of this written assignment is roughly **5-7 pages**. No extensions are allowed except under exceptional circumstances. Late paper will lose 2% of its grade for each day that it is late.

Court Cases:

1. Westendorp v. The Queen, [1983] 1 S.C.R. 43 can be accessed at

(This case involved a municipal-by law which prohibited standing in the street for the purpose of prostitution.)

2. Reference re Firearms Act (Can.), [2000] 1 S.C.R. 783 (This case involves the federal firearms legislation and the Canadian gun registry.)

3. Re Eskimos, [1939] 2 D.L.R. 417 (also reported: [1939] S.C.R. 104) (This old Supreme Court reference case dealt with the question of which level of government had constitutional responsibility for the Inuit—then called Eskimos.)

4. The Queen v. Hauser, 1979 CanLII 13 (S.C.C.)

(This is one of two cases the Supreme Court heard concerning the constitutionality of the federal Narcotics Control Act.)

5. Capital Cities Comm. v. C.R.T.C., 1977 CanLII 12 (S.C.C.) (This case deals with the question of which level of government is responsible for regulating cable television.)

6. Rothmans, Benson & Hedges Inc. v. Saskatchewan, 2005 SCC 13, [2005] 1 S.C.R. 188 (A case involving a provincial government's attempt to regulate tobacco advertising.)

7. Reference re Employment Insurance Act (Can.), ss. 22 and 23, 2005 SCC 56, [2005] 2 S.C.R. 669 (A reference case where the federal maternity and parental benefits provided under Employment Insurance were challenged on division of powers grounds.)

8. Reference as to the Validity of Section 5(A) of the Dairy Industry Act, 1948 CanLII 2 (S.C.C.) (known as Margarine Reference)

9. Union Colliery Co. v. Bryden (1899)

10. Saumur v. City of Quebec (1953)

11. Reference Re Alberta Statutes (1938)

12. Switzman v. Elbling (1957)

13. Edwards v. Canada (1930)-- Persons Case

14. Ontario Hydro v. Ontario.(1993)

15. R. v. Hydro-Quebec, [1997]

Grading, Assignment Submission, Lateness Penalties and Missed Tests

Grading: The grading scheme for the course conforms to the 9-point grading system used in undergraduate programs at York (e.g., A+ = 9, A = 8, B+ = 7, C+ = 5, etc.). Assignments and tests* will bear either a letter grade designation or a corresponding number grade (e.g. A+ = 90 to 100, A = 80 to 90, B+ = 75 to 79, etc.) For a full description of York grading system see the York University Undergraduate Calendar.

Assignment Submission: Assignments for this course must be received on the due date specified for the assignment. Assignments are to be handed in to your TA in tutorial. Email submissions will not be accepted.

Lateness Penalty: Assignments received later than the due date will be penalized at the rate of 2.5% daily, including weekends. Exceptions to the lateness penalty for valid reasons such as illness, compassionate grounds, etc., may be entertained by the Course Director, but will require supporting documentation (e.g., a doctor's letter).

Missed Tests: Students with a documented reason for missing a course test, such as illness, compassionate grounds, etc., which is confirmed by supporting documentation (e.g., doctor's letter) may request accommodation from the Course Instructor. Further extensions or accommodation will require students to submit a formal petition to the Faculty.

Important Additional Information

All students are expected to familiarize themselves with the following information, available on the Senate Committee on Curriculum & Academic Standards webpage (http://www.yorku.ca/secretariat/senate_cte_main_pages/ccas.htm):

- York's Academic Honesty Policy and Procedures/Academic Integrity Website Ethics Review Process for research involving human participants
- Course requirement accommodation for students with disabilities, including physical, medical, systemic, learning and psychiatric disabilities
- Student Conduct Standards
- Religious Observance Accommodation